

# **SELECT MODERN GOVERNMENTS**

**V. D. MAHAJAN**

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#### AN HISTORIC CHAMBER

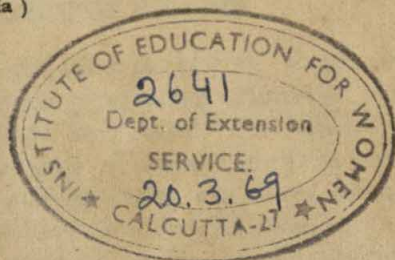
The House of Commons destroyed by enemy action in 1941. The present Chamber, opened in October 1950, retains the traditional features of its predecessor, including its inadequacy to seat more than about half the total membership of the House.



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# SELECT MODERN GOVERNMENTS

( Including the Constitutions of England, U.S.A., Switzerland,  
U.S.S.R., Canada, Red China, Pakistan, France, Australia,  
Union of South Africa, Irish Free State, Japan, Burma, Ceylon  
and India )



By

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*Gajendragadkar, The Nationalist Movement in India*  
*and its Leaders, etc., etc.*

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Maha

**EIGHTH EDITION**  
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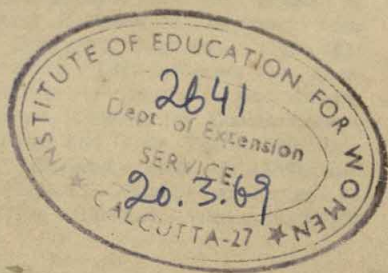
## PREFACE TO THE EIGHTH EDITION

It is gratifying to find that the interest of the people of India in their administrative system is growing. However, the pace of progress is not as it should have been. The important reason is that this country will not grow unless and until we send our best children to manage the administrative machinery of the country. We must realise that unless the best talents of the country are yoked to its administrative machinery, the present downward trend cannot be stopped. We require the best of the administrators, the best of the judges, and the best of the legislators. It is only then that we can hope to compete with the progressive nations of the world.

I have great pleasure in placing the new edition of this book in the hands of the readers. I am grateful to all those who have patronised it. A few but important changes have been made in the Constitution of India and the same has been brought up-to-date. I shall welcome suggestions for the improvement of this book.

III-M/10,  
LAJPAT NAGAR,  
NEW DELHI-14.  
20th October, 1967.

VIDYA DHAR MAHAJAN



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# THE ENGLISH CONSTITUTION

## CHAPTER 1

### NATURE OF THE ENGLISH CONSTITUTION

#### Introductory

A study of the English Constitution is rightly considered to be essential for all students of political science. It was so not only when India was under the British yoke, but holds good even after the independence of the country. A country can grow if its citizens take keen interest in its administration and that is not possible unless they understand the same. They should be acquainted not only with the theory of political science but also with the actual working of political institutions in various parts of the world. Situated as we are, a study of the English Constitution can be considered to be an ideal one for the people of India. It cannot be denied that the present Constitution of India has grown during the last few centuries when we were intimately connected with Great Britain. No wonder the Indian political institutions have grown on the British model.

It is not possible to attempt a survey of the development of the English Constitution. The period extends over a thousand years and the enthusiastic students are referred to study the same from books dealing with the constitutional history of England. The number of the books on the subject is very large but reference may be made to those by Hall, Adams, Taswell-Langmead, Hallam and Maitland. However, it is to be noted that ever since the Norman conquest, the English Constitution has been growing. The period of consolidation was followed by the gradual development of the English Parliament. It was in turn followed by the efforts of the English Parliament to put checks on the power of the King. The struggle was long but ultimately the English Parliament was able to bring the King under its control. The next phase was the development of the Cabinet system in the country and that process has continued unabated.

Tributes have been paid to the English Constitution from many quarters and it may be desirable to refer to some of them. According to William Pitt, "The Constitution of this country is its glory. Free from the destructions of democracy and the tyranny of monarchy, its happiness is to be found in its mixture of parts. It was this mixed government which the prudence of our ancestors devised and which it will be our wisdom unviolately to support. They experienced all the vicissitudes and destructions of a Republic. They felt all the vassalages and despotism of a simple monarchy. They abandoned both, and by blending each together, extracted a system which has been the envy and admiration of the world." According to



Munro, the English Constitution is "a complex amalgam of institutions, principles and practices; it is a composite of Charters and judicial decisions and common law, of precedents, usages and traditions. It is not one document, but thousands of them. It is not derived from one source, but from several. It is not a completed thing but a growth. *It is a child of wisdom and of chance whose course has been sometimes guided by accident and sometimes by high design.*" According to J. G. Letham, "The British Constitution has been a success largely because it has been loose and elastic and has left things to be determined by the commonsense of statesmen as emergencies arise, instead of being decided with the precision of lawyers in the interpretation of written documents." Mr. Mackenzie King, ex-Prime Minister of Canada, has paid his tribute to the English Constitution in these words: "This British Constitution we love. It is partly unwritten; it is partly written; it finds its beginnings in the core of the past, it comes into being in the form of customs and traditions, it is found upon the common law; it is made up of precedents, of Magna Carta, of Petition and Bill of Rights; it is to be found partly in statutes and partly in the usages and practices of Parliament itself. It represents the highest achievement of the British genius at its best. No one has ever seen it; no one has ever adequately described it; yet its presence is felt whenever liberty or right is endangered, for it is the creation of the struggle of centuries against oppression and wrong, and embodies the very soul of freedom."

According to Sir Henry Maine, "Many persons in whom familiarity has bred contempt, may think it a trivial observation that the British Constitution, if not (as some call it) a holy thing, is a thing unique and remarkable. A series of undesigned changes brought it to such a condition, that satisfaction and impatience, the two great sources of political conduct, were both reasonably gratified under it. For this condition became, not metaphorically, literally, the envy of the world, and the world took on all sides to copying it."

### Sources of the English Constitution

There is the famous statement of De Tocqueville that "In England the Constitution....there is no such thing." A similar remark was made by Thomas Paine in these words: "Can Mr. Burke produce the English Constitution? If he cannot, we may fairly conclude that though it has been so much talked about, no such thing as a Constitution exists or ever did exist." To quote George Bernard Shaw, "We have the British Constitution, nobody knows what it is; it is not written down anywhere; and you can no more amend it than you can amend the East Wind. But in the United States you have a real tangible readable document. I can nail you down to every one of its sentences."

It is wrong to maintain that the English people have no Constitution. It is true that they do not have a Constitution in the sense in which the people of India or those of the U.S.A. and the



U.S.S.R. have it. The English Constitution is not to be found in any one written document which can be conveniently referred to. One cannot go to a library and ask for a copy of the English Constitution in the same sense as it applies to India or the U.S.A. However, the English Constitution does exist and can be studied both from conventions and its written elements. According to Lord Bryce, the English Constitution is "a mass of precedents, carried in man's memories or recorded in writing, of dicta of lawyers or statesmen, of customs, usages, understandings and beliefs bearing upon methods of government, together with a certain number of statutes, some of them containing matters of petty detail, others related to private just as much as to public law, nearly all of them persupposing and mixing up with precedents and customs, and all of them covered with a parasitic growth of legal decisions and political habits, apart from which the statutes would be almost unworkable, or at any rate, quite different in their working from what they really are. The English Constitution is to be found in the great constitutional landmarks, statutes, judicial decisions, common law and conventions."

(1) As regards the great constitutional landmarks, those are to be found in the Magna Carta of 1215, the Petition of Rights of 1628, Bill of Rights of 1689, the Act of Settlement of 1701, the Act of Union between England and Scotland of 1707, the Parliament Act of 1911, etc. All these constitutional landmarks form "only the addenda to the Constitution." Although many of them have not been enacted by Parliament, no English statesman can afford to ignore them.

(2) Another source of the British Constitution is the large number of statutes passed from time to time by the British Parliament. Reference may be made in this connection to the Reforms Acts of 1832, 1867, 1884, 1918 and 1928. The Representation of the People Act of 1948 abolished the University Constituencies. The right of a person to vote in a constituency in which he had a "business premises qualification" but did not reside, was taken away. The present law can be put thus: "The persons entitled to vote in any constituency shall be those resident there on the qualifying date, who, on that date and on the date of the Bill, are British subjects of full age and not subject to any legal incapacity to vote. The Abdication Act of 1936, Septennial Act of 1716, the Irish Free State Act of 1922, the Municipal Corporations Act of 1935, the Parliamentary and Municipal Elections Act of 1872, the Judicature Acts of 1873-76, the Local Government Acts of 1888, 1894, 1929, and 1933, the Government of Ireland Act of 1920, the Public Order Act of 1936, the Ministers of the Crown Act of 1937 and the Statute of Westminster of 1931 belong to the same category:

1. According to R. K. Gooch, the Magna Carta "is technically an enactment of the king, with the advice of his Great Council. Parliament grew out of the Great Council, and even at present the Act of Parliament is technically enacted by the king with the advice and consent of Parliament." Likewise, the Bill of Rights was an Act of Parliament.



(3) As regards judicial decisions, those are also a part of the English Constitution. Reference may be made in this connection to *Bainbridge v. Postmaster General* (1906), *Beatty v. Gillbanks*, *Wise v. Dunning*, *Godden v. Hales*, *Stockdale v. Hansard*, *Shirley v. Fagg*, *Bradlaugh v. Gosset*, *Ashley v. White*, *Osborne v. Amalgamated Society Co. Ltd.*, *Attorney General v. De Keyser's Royal Hotel Co.* (1920), *Liversidge v. Anderson* (1942), *Local Government Board v. Arlidge* (1915), *Entick v. Carrington*, *O'Kelley v. Harway*, etc.

In the case of *Wilkes v. Wood*, it was held that a general warrant to search for and capture the papers of an unnamed author was illegal. *Leach v. Money* laid down that a general warrant to search or seize an unnamed person was illegal. The case of *Somerset* established the absence of slavery on the English soil. The immunity of the judges was guaranteed by the case of *Howell*. The independence of the juries was established by the case of *Bushell*. Prof. Dicey has rightly remarked that the English Constitution, "far from being the result of legislation in the ordinary sense of the term, is the fruit of contests carried on in courts on behalf of the rights of the individuals."

(4) Another source of the English Constitution is the common law,<sup>1</sup> which has been defined by Dr. Ogg as "the vast body of legal precept and usage, which through the centuries has acquired binding and almost immutable character." Prof. Munro has rightly remarked that "the common law like statutory law is continual in process of development of judicial decisions." A common law is a body of judge made rules which have never been ordained by King or enacted by a Parliament. The common law is the basis of the prerogative of the Crown, the right of trial by jury in Criminal Cases, the right of freedom of speech and assembly, the right to redress grievances against Government officers, etc.

(5) Another source of the English Constitution are the text-books on constitutional law. Anson's *Law and Custom of the Constitution*, May's *Parliamentary Practice*, Dicey's *Law of the Constitution* and Bagehot's *English Constitution* can be put in this category. These books can be referred to for purposes of ascertaining as to what the law of England is.

(6) However, the most important sources of English Constitution are the conventions of the Constitution. According to Ogg, they consist of "understanding, practices and habits which alone regulate a large portion of the actual relations and operations of the public authorities." According to Baldwin, "The historian can tell you probably perfectly clearly what the constitutional practice was at any given period in the past, but it would be very difficult for a living writer to tell you at any given period in his

1. According to Harrison, "The explanation of the adjective 'common' is that in medieval times the law administered by the king's superior court was the common custom of the realm as against the particular customs with which local jurisdictions were concerned."



life-time what the Constitution of the country is in all respects and for this reason, that almost at any given moment.....there can be one practice called constitutional which is falling into desuetude and there can be another practice which is creeping into use but is not yet constitutional." According to Lord Bryce, the British Constitution "works by a body of understandings which no writer can formulate." It is on account of the existence of a large number of conventions that the English Constitution is said to be convention-ridden.

### Salient Features of the English Constitution

According to Prof. Munro, "The British Constitution is the mother of all Constitutions, the British Parliament is the mother of Parliaments. No matter by what names the legislative bodies of other countries may be known, they have a common parentage."

(1) There are many characteristics of the English Constitution. The first thing that strikes a person is the evolutionary nature of the English Constitution. The English Constitution is like "a river whose moving surface glides slowly past curving in and out and sometimes almost lost to view in the foliage." Again, "it is an assembling structure to which successive owners have added wings and gables, porches and pillars: thus modifying it to suit their immediate wants or the fashion of the time." "It is a mediaeval edifice which has been renovated, modernised until only the tower shall remain unaltered." According to Dr. Jennings, "If the constitution consists of institutions and not of the paper that describes them, the British Constitution has not been made but has grown—and here is no paper." Again, "Formed to meet immediate requirements, they (institutions) were then adapted to exercise more extensive and sometimes different functions. From time to time, political and economic circumstances have called for reform. There has been a constant process of inversion, reform and amended distribution of powers. The building has been constantly added to, patched and partially re-constructed so that it has been renewed from century to century; but it has never been razed to the ground and rebuilt on new foundations. The English Constitution is a child of evolution. It can be traced back for centuries. In this respect, it differs from many other constitutions which were framed by a Constituent Assembly or a Parliament."

According to Boutmy, "The English have left the different parts of their constitution just where the wave of History had deposited them, they have not attempted to bring them together, to classify or complete them, or to make a consistent and coherent whole. This scattered constitution gives no hold to sifters of texts and seekers after difficulties. It need not fear critics anxious to point out an omission, or theorists ready to denounce. By this means only can you preserve the happy incoherences, the useful incongruities, the protecting contradictions which have such good reason for existing in institutions, viz., that they exist in the nature of things, and which, while they allow free play to all social forces,

never allow anyone of these forces room to work out of its allotted line or to shake the foundations and walls of the whole fabric. This is the result which the English flatter themselves they have arrived at by the extraordinary dispersion of their constitutional texts, and they have always taken good care not to compromise the result in any way by attempting to form a code."

According to Ogg, "The English Constitution is a living organism. It is always growing with a view to meeting the necessities of the people. It is not a pudding made out of a recipe."

(2) England has a parliamentary form of government. The executive is responsible to the legislature. Only that party forms the ministry which has a majority in Parliament. It continues in office so long as it continues to enjoy that confidence. If the ministry is defeated, it must resign. The Ministers are responsible to Parliament for their acts of omission and commission. The administration in England is carried on according to the wishes of the people as expressed through their representatives in Parliament. In this respect it differs fundamentally from the American Constitution. According to Greaves, the right to govern in England "flows through the legislature to the cabinet; is not separately conferred on a popularly elected chief executive and on a popularly elected Parliament; the right is not capable therefore of conflicting interpretation by two bodies having an equal moral claim to speak for the public. The reasons of conflict or of inanition which result from such a separation of powers are attested by a wide experience, whether it be Weimar constitution of Germany, the federal constitution of America or the 1848 constitution of France."

(3) England has a limited monarchy. Slowly and slowly, the powers of the King of England have been taken away and those are being exercised by the Ministers in the name of the King. The King can do nothing without the advice and consent of the ministry.

(4) England has a flexible Constitution. While the method of amendment of the Constitution is very difficult in the U.S.A., it is very flexible in England. The English Constitution can be amended in the same way as an ordinary law of the country. As a matter of fact, there is no separate method of amendment of the constitution. The Abdication Act of 1936 was passed within half an hour of its introduction in Parliament.

(5) Unlike India and the U.S.A. which have a federal form of government, the English Constitution is unitary. All powers are concentrated in the Central Government and the British Parliament can do whatever it pleases. The question of *ultra vires* or *intra vires* does not arise.

(6) Another characteristic of the English Constitution is the supremacy of the British Parliament. There is nothing which the British Parliament cannot do. According to Sir Edward Coke, the jurisdiction of Parliament is absolute and transcendent. To quote Munro, "The one thing it cannot do is to bind its successors."



It cannot interrupt or put an end to the process of constitutional change." According to Ramsay Muir, "If separation of powers is the essential principle of the American Constitution, concentration of responsibility is the essential principle of the British Constitution."

(7) Another characteristic of the English Constitution is its unreality. It has rightly been pointed out that nothing is what it seems or seems what it is. England has a King but he does not exercise any powers. We talk of the sovereignty of Parliament but the real power lies in the hands of the Cabinet. The House of Lords sits as the highest Court of Appeal, but only the Law Lords take part in its proceedings when it sits as the highest Court of Appeal. No wonder it has been pointed out that *the Government of England is in ultimate theory an absolute monarchy, in form a constitutional limited monarchy and in actual practice a democratic republic*. The constitutional structure of England, bearing the imprint of many hands, has been compared by Sir William Anson to a rambling structure, to which successive owners have added wings and gables, porches and pillars without any system or symmetry. It abounds in anomalies, which the English people love to retain. It is the gap between constitutional theory and governmental practice which has been called the unique feature of the British Constitution.

(8) Another characteristic of the English Constitution is the large number of conventions in the Constitution. These conventions have revolutionised the very nature of the English Constitution. It is on account of their presence that the English Constitution can be said to be an unwritten Constitution. According to Sir J.A.R. Marriot, "These unrealities—this wide divergence between the theory and fact—render it peculiarly difficult to analyse or to describe the actual working of the English Constitution."

(9) Another characteristic of the Constitution is the Rule of Law. This implies the supremacy of law in England. No person can be punished unless and until it is definitely proved that he has violated some law of the country. There can be no arbitrary punishment of any individual. No man is above law. Every man, whatever his rank or condition, is subject to the ordinary law of the country. What is law for one is also law for another.

(10) Another characteristic of the English Constitution is that it is essentially a judge-made Constitution. It has rightly been pointed out that most of the rights enjoyed by English citizens have been guaranteed to them by the judicial decisions given from time to time by the judges of England. The purpose which is served by the fundamental rights in the Indian Constitution is also served by judicial decisions in England.

(11) The English Constitution is also based on the principle of checks and balances. The two Houses of the British Parliament can pass a law, but no law can be enforced unless and until

it is signed by the King. Likewise, no order of the King is valid unless and until it is countersigned by some Minister of the country. (The Ministers in England are responsible to Parliament and the latter has the power to turn them out by passing a vote of no-confidence, rejecting a Bill introduced by the Ministry, rejecting the budget, etc. Likewise, the Prime Minister can ask the King to dissolve Parliament. If the Members of Parliament can turn out the Ministry, the latter can also send the members home. The Ministers control the civil servants, but at the same time they depend upon them for the enforcement of their policies. Judges are appointed by the executive, but once appointed they cannot be turned out by the executive. They hold office during good behaviour. They can criticise and check the arbitrary exercise of power by the executive. According to Lord Bryce, "The delicate equipoise of the Ministry, the House of Commons, and the nation acting at a general election, is the secret of the smooth working of the British Constitution."

(12) Another characteristic of the English Constitution is the principle of tolerance. To quote Dr. Jennings, "It has developed gradually from the struggles of the seventeenth century. It has been carried out in the laws; but it is still more an attitude of mind. It is, however, not tolerance alone that makes democratic government work, that is, the majority is not permanent. It is based upon different views of personal and national interest, views which are susceptible of change and, in a sufficient number of persons, do change from time to time. Not only do opinions fluctuate but they fluctuate sometimes violently and the swing of the pendulum is a familiar feature of British politics. Consequently, parties can and do appeal to reason. Majorities are unstable and the Opposition of today is the government of tomorrow. This important fact must not be forgotten, for it enables the minority to submit peacefully and even cheerfully to the will of the policy of the majority." (*The British Constitution*, p. 32).

## Conventions

The importance of conventions in the English Constitution cannot be overemphasized. It is on account of the part played by these conventions that the English Constitution is called an unwritten Constitution. The important provisions regarding the actual working of the government are based on conventions in England. What are called conventions of the Constitution by Dicey are referred to as "the unwritten maxims of the constitution" by J. S. Mill and "the customs of the constitution" by Anson.

## Their Nature

As regards the nature of conventions, Mr. Freeman has remarked thus: "We now have a whole system of political morality, a whole code of precepts for the guidance of public men, which will not be found in any page of either the statute or the common law,



but which are in practice held hardly less sacred than any principle embodied in the Great Charter or in the Petition of Rights. In short, by the side of our written law, there has grown up an unwritten or conventional constitution. When an Englishman speaks of the conduct of a public man being constitutional or unconstitutional, he means something wholly different from what he means by conduct being legal or illegal."

According to Dr. Jennings, conventions "provide the flesh which clothes the dry bones of the law; they make the legal constitution work; they keep it in touch with the growth of ideas. The constitution does not work itself; it has to be worked by men. It is an instrument of national co-operation and the spirit of co-operation is as necessary as the instrument. The constitutional conventions are the rules elaborated for effecting that co-operation. Also, the facts of a constitution must change with the changing circumstances of national life. New needs demand new emphasis and a new orientation even when the law remains fixed. Men have to work the old law in order to satisfy the new needs. Constitutional conventions are the rules which they elaborate."

According to Sir William Holdsworth, "Conventions must grow up at all times and in all places where the powers of government are vested in different persons or bodies—where, in other words, there is a mixed constitution." "The constituent parts of a state", said Burke, "are obliged to hold their public faith with each other, and with all those who derive any serious interest under their engagements, as much as the whole state is bound to keep faith with separate communities." Necessarily conventional rules spring up to regulate the working of the various parts of the constitution, their relation to one another and to the subject. And not only will conventions spring up in these circumstances; but they will always have two common characteristics. In the first place, it is at these conventions that we must look if we would discover the manner in which the constitution works in practice. They determine the manner in which the rules of law, which they presuppose, are applied, so that they are, in fact, the motive power of the constitution. In the second place, these conventions are always directed to secure that the constitution works in practice in accordance with the prevailing constitutional theory of the time."

### **Their Value**

According to Prof. Dicey, most of the conventions are the rules for determining the mode in which the discretionary powers of the Crown are to be exercised. Another object of the conventions is to secure that Parliament or the Cabinet shall in the long run give effect to the will of the political sovereign. To quote him, "Our modern code of constitutional morality secures, though in a roundabout way, what is called abroad the sovereignty of the people." The rule which gives the appointment and control of the government mainly to the House of Commons is at bottom a rule which gives the ultimate control of the executive to the nation.

According to Dr. Jennings, conventions fulfil two important functions. In the first place, they enable a rigid framework to be kept up with changing social needs and changing political ideas. Secondly, the conventions enable the men who govern to work the machine. The Cabinet system enables the co-ordination of the work of the Government. Both the Government and His Majesty's Opposition work together. Conventions also enable the Dominions and the mother country to work together.

### Law and Conventions

A distinction may be made between law and conventions. While law is enacted by the legislature, conventions are not. However it is possible that the conventions of today may become the law of tomorrow. Moreover, law is enforced by courts, but conventions are not enforced as such. Law is static but conventions keep on changing. The growth of conventions is compared to the growth of a tree. Conventions grow steadily and slowly without being noticed. While the growth of conventions is gradual, law changes in an abrupt manner. The old law is set aside and a new one is made in its place, not gradually but abruptly. According to Jennings, "Though the conventions are built in the first instance on the foundation of law, when once they have been established they tend to form the basis for the law." According to the Report of the Conference on the Operation of Dominion Legislation, 1929, "The association of the constitutional conventions with law has long been familiar in the history of the British Commonwealth. It has been characteristic of political development both in the domestic government of these communities and in their relation with each other; it has permeated both executive and legislative power. It has provided a means of harmonising relation where a purely legal solution of practical problems was impossible, it would have impaired free development or would have failed to catch the spirit which gives life to institutions. Such conventions take their place among the conventional principles and doctrines which are in practice regarded as binding and sacred whatever the powers of Parliament may in theory be."

### Conventions and Common Law

As regards conventions and common law, both of them are not enacted by the legislature. However, while common law is enforced by the courts of the country, conventions cannot be enforced. Conventions are the outcome of the customs of the country, but common law is the result of the decisions given by the courts of the country.

### Important Conventions

The following are important conventions in the English Constitution:—

(1) The whole of the Cabinet system in England is based on conventions. When the general elections are over, the convention



is that the King of England has to summon the leader of the majority party to form the Ministry. The Prime Minister is given a free hand in the selection of his colleagues. The King has no business to interfere in his choice. He cannot force his own nominee on the Prime Minister.

(2) The ministry remains in office so long as it enjoys the confidence of the House of Commons. If the Ministry is outvoted, it has two courses open to it. It can resign forthwith and the leader of the party in opposition can be summoned to form a new ministry. In the alternative, the Prime Minister of the defeated ministry has the right to ask the King to dissolve the House of Commons. (The convention is that when such a request is made by the Prime Minister, the King has no choice but to order the dissolution of the House of Commons. Then the General Elections are held.) If the defeated ministry secures a majority in the elections, it continues to remain in office. However, if it is defeated in the new elections, it must resign without facing the new House of Commons. It cannot ask for a dissolution of the House of Commons for the second time.

The view of Wade and Phillips is that there can be circumstances under which the King may not dissolve the House of Commons on the advice of the Prime Minister. That can happen if the King is satisfied that an existing Parliament is still vital and capable of doing its job, a general election would be detrimental to the national economy, more particularly if it followed closely on the last election, and he could rely on finding another Prime Minister who was willing to carry on his Government for a reasonable period with a working majority.

(3) The Ministers are responsible collectively to the House of Commons. Even if one Minister is defeated, the whole ministry must resign. According to Lord Morley, "As a general rule, every important piece of departmental policy is taken to commit the entire Cabinet and its members stand or fall together. The Chancellor of the Exchequer may be driven from office by a bad dispatch from the Foreign Office, and an excellent Home Secretary may suffer for the blunders of a stupid Minister of War. The Cabinet is a unit, a unit as regards the sovereign, and a unit as regards the legislature. Its views are laid before the Sovereign and before Parliament as if they were the views of one man. It gives its advice as a single whole both in the Royal closet and in the hereditary or the representative chamber. The first mark of the Cabinet is that the institution, as now understood, has united and indivisible responsibility."

Lord Salisbury observed thus in 1878: "For all that passes in Cabinet every member of it who does not resign is absolutely and irretrievably responsible and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues... It is only on the principle that absolute responsibility is undertaken by every member of the

Cabinet, who, after a decision is arrived at, remains a member of it, that the joint responsibility of Ministers to Parliament, can be upheld and one of the most essential principles of parliamentary responsibility established".

(4) Another convention is with regard to the Speaker. The Speaker of the House of Commons is elected on party lines, but after his election, he gives up his party allegiance. He becomes a no-party man. He behaves absolutely in an impartial manner. The result is that the Speaker is returned unopposed on the occasion of the next general elections and is also re-elected as Speaker. The convention is that he is allowed to continue as Speaker as long as he desires.

(5) According to law, the House of Lords is the highest Court of Appeal in England. However, a convention requires that when the House of Lords sits as the highest Court of Appeal, it is only the Law Lords who sit and not the other members of the House of Lords. These Law Lords are appointed for life on account of their legal knowledge.

(6) Another convention is that the king will not use his veto power. When a bill has been passed by the House of Commons and the House of Lords, it has to be sent to the King for his signature. Without such sanction, the bill does not become law. (The King could refuse to approve the Bill and reject it, but a convention demands that the King will not use his veto power.)

(7) Another convention is with regard to the Prime Minister of England. It is true that during the 19th century there were many Prime Ministers of England who belonged to the House of Lords, *e.g.*, Palmerston, Salisbury, etc. However, a convention demands that the Prime Ministers of England must belong to the House of Commons. It is well known that Lord Curzon in 1923 was not chosen by George V as Prime Minister because he belonged to the House of Lords.

However, it is pointed out that in 1940, the personal preference of George VI was Lord Halifax. The diary of the King shows that he suggested the name of Lord Halifax to Mr. Chamberlain. He also suggested that the peerage of Lord Halifax should be placed in abeyance for the time being. Sir John Wheeler-Bennett, the biographer of George VI, tells us that none of those who preferred Lord Halifax as Prime Minister saw any constitutional objection to a Prime Minister being in the House of Lords. Even the doubts of Lord Halifax himself on accepting the Premiership did not include this objection. However, ultimately, the choice fell upon Mr. Winston Churchill.

(8) Another convention is that treaties can be made without the authority of any Act of Parliament. However no ministry would dare to enter into a treaty unless and until it is sure that it can carry the House of Commons with it.

(9) Another convention is that if the House of Lords insists



on opposing a measure passed by the House of Commons, it becomes the duty of the Crown to create, or threaten to, as many Peers as are necessary to override the opposition of the members of the House of Lords. It is well known that such a threat was given in 1832 and 1911.

(10) Another convention is that Parliament must be summoned once a year. Not more than one year can pass without the summoning of Parliament.

(11) Dominion Status is also a product of conventions. It is true that some of the conventions have been given the form of law by the Statute of Westminster of 1931, but still there are many matters which are governed by conventions. Rules for making treaties by dominions are governed by conventions as embodied in the reports of the Imperial Conferences of 1926 and 1930. Moreover, any alteration in the law touching the succession to the throne or Royal Style and Titles must require the consent of Parliaments of Great Britain and Dominions.

(12) Another convention is that the bill must pass through certain stages both in the House of Commons and the House of Lords. The provision with regard to three readings is a matter of convention.

(13) Another convention is the system of "pairing". When a member belonging to the majority party is likely to be absent, he informs his Whip and the latter finds out from the Whip of the Opposition whether some member on the other side is likely to absent or not. If the Whip of the Opposition replies in the affirmative, an arrangement is made by which both the members can be absent without in any way affecting the result of a division. In such a case they are said to be "paired".

(14) Another convention is that the committees of the House of Commons represent party strength in the House. There is nothing illegal if the party in power appoints all the members of the committees from its own party. The actual practice is based on convention alone.

(15) Another convention is that a speech from the Government side shall be followed by a speech from the Opposition. As a matter of fact, the very idea of His Majesty's Opposition is a matter of convention.

(16) Another convention is that while framing social legislation, the appropriate Department must consult the appropriate outside interest. If a new bill on factories is to be passed, it is the duty of the Home Office to consult the General Council of the Trade Union Congress. To quote, "It has been the practice in the past, and one which has been appreciated, for the Minister to consult with this Association upon legislative proposals....and it is to be regretted that the Minister was not able to adopt this course in reference to a matter of less importance as the withdrawal of subsidies."

(17) Another convention is that the government will not initiate legislation of a controversial nature without a specific mandate from the electorate. This is known as the "*mandate convention*" and it vindicates the principle of popular sovereignty. The manifesto of the Labour Party in 1945 specifically referred to the necessity of curbing the powers of the House of Lords in these words: "We give clear notice that we will not tolerate obstruction of the people's will by the House of Lords." The result was that when the Labour Party passed legislation concerning nationalisation, the Conservative majority in the House of Lords did not throw them out. Viscount Cranborne, the leader of the Conservative Party in the House of Lords, observed thus: "Whatever our personal views, we should frankly recognise that these proposals were put before the country at the recent General Elections and that the people of this country, with full knowledge of these proposals, returned the Labour Party to power. The government may, therefore, I think, fairly claim that they have a mandate to introduce the proposals. I think it would be constitutionally wrong, when the country has so recently expressed its view, for this House to oppose proposals which have been definitely put before the electorate." Likewise, when the Liberals got a clear mandate from the people on the question of the reform of the House of Lords, the House of Lords had to give up its opposition and thus the Parliament Act of 1911 was passed.

(18) When a ministry is defeated and it tenders its resignation, the convention is that the King first consults the leader of the Opposition. This is done to show that the king is impartial in politics. However, the ultimate decision is the personal responsibility of the King. In the task of selection, precedent is not conclusive.

(19) The law is that all servants of the Crown can be dismissed at the pleasure of the Crown. However, this is actually done only in cases of misconduct or gross inefficiency. There is a convention that civil servants continue to remain in office although the Government keeps on changing. The changes in the fortunes of the Government do not affect the tenure of the civil servants. Political considerations do not justify the dismissal of a civil servant. However, in case a civil servant is dismissed, the dismissal would be legal, although unconstitutional.

(20) Another convention is that when negotiating for acquisition or sale of land, local authorities employ the District Valuer of the Commissioners of Inland Revenue as an independent valuer. This practice has been forced upon the local authorities because they are not allowed to enter into such a transaction or borrow money to finance it without the consent of the Minister concerned.

(21) There is also the convention of adopting departmental model bye-laws and regulations by the local authorities. This convention helps the local authorities to secure the consent of the department concerned.



### Sanction behind Conventions

According to Prof. Dicey, "Constitutional understandings are admittedly not laws; they are not (that is to say) rules which will be enforced by the Courts. If a Premier were to retain office after a vote of censure passed by the House of Commons, if he were (as did Lord Palmerston under like circumstance) to dissolve or strictly speaking to get the Crown to dissolve Parliament, but unlike Lord Palmerston, were to be again censured by the newly elected House of Commons, and then, after all this had taken place, were still to remain at the head of the government,—no one could deny that such a Prime Minister had acted unconstitutionally. Yet no court of law would take notice of his conduct. Suppose, again, that on the passing by both Houses of an important bill, the King should refuse his assent to the measure, or (in popular language) put his 'veto' on it. Here there would be a gross violation of usage, but the matter could not by any proceeding known to English law be brought before the judges. Take another instance. Suppose that Parliament were for more than a year not summoned for the despatch of business. This would be a course of proceeding of the most unconstitutional character. Yet there is no court in the land before which one could go with the complaint that Parliament had not been assembled. Still the conventional rules of the constitution, though not laws, are, as it is constantly asserted, nearly if not quite as binding as laws. They are, or appear to be, respected quite as much as most statutory enactments, and more than many. The puzzle is to see what is the force which habitually compels obedience to rules which have not behind them the coercive power of the Courts."

Prof. Dicey referred to two views regarding the sanction behind conventions and came to the conclusion that they were not the real sanction behind conventions. The first view he referred to was that obedience to conventions was ultimately enforced by the fear of impeachment. Dicey conceded the fact that the habit of obedience to the constitution was originally generated and confirmed by impeachments, but that was not the case in modern times. The fear of the Tower and the bloc did not influence the lives of the modern statesmen. No impeachment had taken place for the violation of the constitution for a pretty long time and as a matter of fact the practice of impeachment had become absolutely out of fashion. There was no possibility of its use in the future. The growth of the Cabinet system in the country made it superfluous. There was a kind of contradiction between impeachment and ministerial responsibility.

Dicey also referred to the view that obedience to conventions was ensured by the force of public opinion. To quote Dicey, "To contend that the understandings of the constitution derive their coercive power solely from the approval of the public is very like maintaining the kindred doctrine that the conventions of international law are kept alive solely by moral force. Every one, except a few dreamers, perceives that the respect paid to inter-



national morality is due, in great measure, not to moral force, but to the physical force in the shape of armies and navies, by which the commands of general opinion are in many cases supported; and it is difficult not to suspect that, in England at least, the conventions of the constitution are supported and enforced by something beyond or in addition to the public approval."

The dread of impeachment, says Dicey, may have established and the force of public opinion may have influenced the dogmas of political ethics, but the sanction behind the conventions is that their breach would almost immediately bring the offender into conflict with the courts and the law of the land. Suppose that Parliament was prorogued for more than a year and for two years no Parliament was summoned. The result would be that the Army Act would expire. There will be no means of controlling army without a breach of law. Either the army must be discharged and thereby allow law and order to collapse or the army must be kept and discipline maintained without any legal authority. If the second course is adopted, every person from the Commander-in-Chief downwards would find himself in conflict with the law of the country. Moreover, no budget will be passed and the collection of taxes would become illegal. All those collecting the taxes without the authority of Parliament may be put behind the bars. The result would be that an administration which attempted to violate the convention of annual meetings of Parliament would find itself in great difficulty. It follows that this convention is in reality based upon and secured by the law of the land. Dicey maintained that a similar situation would arise if a ministry did not resign after losing the confidence of the House of Commons.

Critics point out certain shortcomings in the view of Prof. Dicey. It is pointed out that Dicey himself admitted that the violation of every convention did not bring the offender into a conflict with the law of the country. For example, if a bill was not read a given number of times in Parliament, there was no violation of the law of the country. Moreover, a violation of the convention of resigning on a vote of no-confidence will not immediately bring the ministry into conflict with law. If the ministry is defeated after the passing of the budget and the extension of the life of the army for a year, a defeated ministry can afford to remain in office until the next year when the budget has to be passed again. According to Lowell, "England is not obliged to continue for ever holding annual sessions of Parliament, because a new Mutiny Act must be passed and new appropriations made every twelve months. Parliament, with its plenitude of power, could as well pass a permanent Army Act, grant the existing annual taxes for a term of years, and make all ordinary expenses a standing charge on the Consolidated Fund out of which must be paid now without annual authorisation."

Critics also point out that the fear of impeachment is also not the sanction behind conventions. The rule of impeachment has fallen into disuse and is not likely to be revived.



✓ According to Dr. Jennings, obedience is based on general acquiescence and not upon force. If the people do not want to obey them no amount of force can compel them to do so.

According to Wade and Phillips, "It is of more importance to consider the motive which induces obedience in each field where conventions operate. The Sovereign is guided in the exercise of personal prerogatives by a recognition of the tradition of impartiality which has grown up round the throne and is the real safeguard to ensure a continuance of the monarchy. Ministers fear lest they may be compelled to resign by force of public opinion manifested by an adverse vote at the polls, or, even apart from an election, by estranging some or all of their supporters in the House of Commons. They may also be credited with the desire to govern in accordance with the traditions of representative government. In the sphere of Commonwealth relations, the knowledge that there are in the background the vital political issues of unity in the Commonwealth and defence secures moderation in the use to which independence, now fully conceded by the United Kingdom, is put by each member State. There is in fact a standard of political authority which commands obedience. Those who govern submit to the judgment of public opinion, which they may seek to influence, but cannot ultimately control."

According to Ogg, the real sanction behind conventions is the force of public opinion. Conventions are obeyed because the public opinion demands that they must be obeyed. The public opinion will not tolerate their violation. (A defeated ministry must resign as the public opinion will not tolerate the continuance of a ministry which has lost the confidence of the representatives of the people. Public opinion also demands that Parliament must be called every year so that the affairs of the State must be discussed by the representatives of the people. Likewise, the people will not tolerate the participation of all the members of the House of Lords when that august body sits as the highest Court of Appeal. Law is a technical matter and the ordinary members of the House of Lords cannot be expected to do justice to it. There is no doubt that if all the members of the House of Lords were to insist on taking part in the proceedings while disposing of appeals, there would be demand on the part of the people to take away this power from the House of Lords. The same can be said about other conventions. The public expects that the King will not veto a bill which has been passed by the House of Commons and the House of Lords. If the representatives of the people have approved of a particular measure and the Ministry has not opposed its passage, it is no business of the King to veto that measure. Under the circumstances, it can safely be stated that the real sanction behind conventions is the force of public opinion.

### SUGGESTED READINGS

*Amery, L. S.*

Thoughts on the Constitution, 1953.

*Amos, M.*

The English Constitution, 1930.

- Anson, W. R. : The Law and Custom of the Constitution.  
 Bagehot, Walter : The English Constitution.  
 Birch, A. H. : Representative and Responsible Government (1964).  
 Carter & others : The Government of Great Britain.  
 Chapman, Brian : British Government Observed.  
 Dicey, A. V. : The Law of the Constitution.  
 Gooch, R. K. : The Government of England, 1947.  
 Greaves, H. B. G. : The British Constitution, 1951.  
 Hallam, H. : Constitutional History of England, 1886.  
 Harrison : The Government of Britain.  
 Jennings, W. I. : The Law and the Constitution.  
 Laski, H. J. : Reflections on the Constitution, 1951.  
 Laski, H. J. : Parliamentary Government in England.  
 Low, S. : The Governance of England.  
 Lowell, A. L. : Government of England.  
 Marriott, J. A. R. : British Political Institutions.  
 Mathiot, Andre : The British Political System.  
 Muir, Ramsay : How Britain is Governed?  
 Mackenzie and Grove : Central Administration in Britain (1957).  
 Munro : Governments of Europe, 1947.  
 Maitland, F. W. : Constitutional History of England, 1909.  
 Ogg, F. A. : English Government and Politics, 1936.  
 Ogg and Zink : Modern Foreign Governments, 1953.  
 Plaskitt and Jordan : Government of Britain.  
 Rosenberg : How Britain is Governed?  
 Sisson, C. H. : The Spirit of British Administration (1959).  
 Stannard : Two Constitutions.  
 Stewart, M. : The British Approach to Politics.  
 Wade & Phillips : Constitutional Law.  
 Wheare, K. C. : Modern Constitutions.



## CHAPTER 2

### THE KING OF ENGLAND

Kingship in England can be traced back to the Anglo-Saxon period. It has a chequered history. There was a time when the King of England could do whatever he pleased. He was absolutely absolute in the affairs of the State. His will was law. However, as time passed, the power of Parliament began to increase. There were many conflicts, but ultimately the position of the King was subordinated to Parliament after the Glorious Revolution of 1688. After that, there was the growth of the Cabinet system. That also was responsible for reducing the position of the King to a mere figurehead.

#### King and Crown

There is a fundamental distinction between the King and the Crown. There are many subtle distinctions in the British government, but none more vital than the distinction between the King and the Crown.

The distinction between the King and the Crown is nicely expressed in the saying: "The King is dead, long live the King." This means that a particular king may die, but the institution of kingship continues. George V can die and he can be succeeded by Edward VIII, but the institution of kingship continues. It has rightly been stated that "the Crown never dies". The powers and functions and prerogatives of the Crown are never suspended even for a single moment. They belonged to a post, not to a person". According to Prof. Munro, "The Crown is an artificial or juristic person; it is not incarnate, and it never dies." According to Sir Sidney Low, the Crown is "a convenient working hypothesis."

According to Dr. Finer, "When we talk of the actions of the Crown in politics, we mean that the people, Parliament and the Cabinet have supplied the motive power through the formal arrangements established by centuries of constitutional development. The Crown is the ornamental cap over all these effective centres of political energy." The Crown is merely symbol of power. It is a legal fiction. It is a synthesis of supreme authority.

#### The King can do no wrong

This statement means that the King of England cannot be held responsible for anything done in his name. The reason is obvious. No order of the King is effective unless and until it has been countersigned by some minister. The minister who countersigns the order of the King becomes responsible for it. No wonder, the responsibility of the King finishes.

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1. Formerly, no action lay against the Crown. Only a Petition of Right could be filed. The Crown Proceedings Act, 1947, has put the Crown on the same footing as private individuals.

The King can do no wrong because he can authorise no wrong. The King is not the real executive and he has no power to authorise anything. It is the ministers who have real power and authority and they alone are held responsible. It is stated that once upon a time a courtier of Charles II wrote the following lines on the door of the Royal Bed Chamber:—

“Here lies a great and mighty King,  
Whose promise none relies on,  
Who never said a foolish thing.  
Nor ever did a wise one.”

The reply of Charles II was that it was all very true because his sayings were his own, but his acts were the acts of his ministers.

According to Lord Erskine, “The King can have no conscience which is not the trust of responsible subjects. When he delivers the seals of office to his officers of State, his conscience, as it regards the State, accompanies them. No man in England is less disposed than I am to abridge the King’s prerogative, or to degrade the dignity of his high office, by reducing him to a cipher.... but as all men must have errors, the wisdom of our government turns them aside from him. The maxim that the King can do no wrong, does not seek to alter the nature and constitution of things, but to preserve the government not only against the impeachment of crime, but even against the irreverence and loss of dignity arising from the imputation of it. No act of State or government can, therefore, be the King’s: he cannot act but by advice; and he who holds office sanctions what is done, from whatever source it may proceed.”

According to Lord Esher, the King has many prerogatives, “but when translated into action they must be exercised on the advice of a minister responsible to Parliament. This position is fundamental, and differentiates a constitutional monarchy based upon the principles of 1688 from all other forms of government. No one acquainted with the inner working of the constitution can doubt the enormous powers retained and exercised by the sovereign. In the domain of patronage and appointment, naval, military, ecclesiastical and civil, he wields great influence and power. Over foreign policy his personality exercises a sway commensurate with his intimate knowledge of foreign courts and his sustained relations with foreign potentates...”

“What then is the King to do if he is asked by his minister to violate the Constitution?

“The answer is that the sovereign cannot act unconstitutional, so long as he acts on the advice of a minister supported by a majority of the House of Commons. Ministerial responsibility is the safeguard of the monarchy. Without it the Throne could not stand for long, amid the gusts of political conflicts and the storms of political passion.....

“In the last resort the King has no opinion. If the constitu-



tional doctrine of ministerial responsibility means anything at all, the King would have to sign his own death warrant, if it were presented to him for signature by a minister commanding a majority in Parliament. If there is any tampering with this fundamental principle, the end of monarchy is in sight."

According to Prime Minister Asquith, "We have now a well-established tradition of two hundred years that in the last resort the occupant of the throne accepts and acts upon the advice of his ministers.....If the King were to break that rule, he would, whether he wishes it or not, be dragged into the arena of party politics, and.....it is no exaggeration to say that the Crown would become the football of contending factions."

The growth of ministerial responsibility has been responsible for taking the King away from the field of party politics. That has added to the popularity of the King. The credit or the discredit goes to the Ministry in power and not to the King.

The legal maxim "The King is dead, long live the King" shows that a particular king may die, but the throne is never vacant. One king is succeeded by another. This succession is automatic as can be seen from the declaration of King Edward VIII made in the Privy Council soon after the death of his father. The new king observed this: "After the irreparable loss which the British Commonwealth of Nations has sustained by the death of His Majesty, my beloved father, has devolved upon me the duty of sovereignty. I know how much you and all my subjects, with, I hope I may say, the whole world feel for me in my sorrow, and I am confident of the affectionate sympathy which will be extended to my dear mother in her over-powering grief. When my father stood here 26 years ago, he declared that one of the objects in his life would be to uphold constitutional government. Therein I am determined to follow my father's footsteps and work, as he did throughout his life, for the welfare and happiness of my subjects. I place my reliance upon the affection of my people throughout the Empire and upon the wisdom of their Parliaments to support me in this heavy task, and I pray that God will guide me to perform it." The next day, the following Proclamation was made from the balcony of St. James Palace: "Whereas it pleased Almighty God to call to His Mercy our late Sovereign Lord, King George V of blessed and glorious memory by whose decrease the Imperial Crown of Great Britain and Ireland is solely and rightfully come to the High and Mighty Prince Edward Albert Christian George Andrew Patrick David, we, therefore, Lords Spiritual and Temporal of this realm being here assisted with these of his late Majesty's Privy Council, with numbers of other principal gentlemen of quality with the Lord Mayor, the Aldermen and Citizens of London, do now hereby and with one voice and consent of tongue and heart publish and proclaim that the High and Mighty Prince Edward Albert Christian George Andrew Patrick David is now, by the death of our late Sovereign of happy memory, become our only lawful and rightful liege King Edward VIII by the Grace of God

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of Great Britain and Ireland and British Dominions beyond the seas, King and Defender of the Faith, Emperor of India.

"Whereto we acknowledge all faith and constant obedience with all hearty and humble affection. Beseeching God, through whom Kings and Queens do reign, to bless the royal King Edward VIII with long and happy years to reign over us."

### Powers of the Crown

There are many sources of the authority of the Crown. Some of them are derived from the prerogatives and the others from the statutes passed from time to time by the British Parliament. As regards the prerogatives of the Crown, Prof. Dicey has described them in these words: "The prerogative appears to be historical, and as a matter of actual practice nothing less than the residue of discretionary or arbitrary authority which at any time is legally left in the hands of the Crown."

According to Lowell, "All told the executive authority of the Crown is, in the eye of law, very wide, far wider than that of the chief magistrate in many countries, and well-nigh as extensive as that now possessed by the monarch in any government not an absolute despotism; and although the Crown has no inherent legislative power except in conjunction with Parliament, it has been given by statute very large powers of subordinate legislation."

The Crown is the authority for the appointment of all officials of the Government. He can also dismiss them in his discretion except in the case of judges. However, this power is not exercised in actual practice as the civil servants are controlled and regulated by the Civil Service Regulations concerning them. The King is also the commander of the army, navy and air force. The King supervises and directs the works of the Local Governments. This is done in actual practice through the agency of the various departments. The King appoints and receives ambassadors, ministers and consuls. He declares war and makes peace. All treaties and agreements are made by him and can be ratified by him even without the consent of Parliament. The King issues Orders in Council and exercises the power of veto with regard to the colonies. He has also the prerogative of pardon and reprieve. The King is the fountain of justice. All justice is administered in the name of the King. All judges are the judges of His Majesty. They are appointed by him although he cannot remove them. All criminals are prosecuted in the name of the King. In the case of dominions and colonies, the final appeal lies with the King although in actual practice it is heard by the Judicial Committee of the Privy Council which technically merely advises the King to give the judgment in a particular way.

The King is the head of the Church of England. It is he who appoints the Archbishops of Canterbury and York, Bishops and other officials of the Church. The assent of the King is necessary for all measures passed by the National Assembly of the Church of England. The final appeal from the Ecclesiastical Courts lies



to the Judicial Committee of the Privy Council. In matters of discipline in the Church the King is the final authority.

The King is not only the fountain of justice but also of all honours. The King has the unlimited power of creating as many Peers as he likes. However, this power is exercised by the King only on the advice of the Prime Minister. Even the honours are given by the King on the advice of the Prime Minister. It is true that Queen Victoria used to object to certain honours being given but even she had to give way when the Prime Minister insisted on doing so.

The King has the power to summon and prorogue Parliament and dissolve the House of Commons. However, the power of dissolution is exercised by the King merely on advice of the Prime Minister. When a Bill has been passed by Parliament, it must be assented to by the King. The King has the power of veto but it has never been exercised.

### Prerogatives of the Crown

It has already been pointed out that one of the sources of the powers of the King is the prerogatives of the Crown. According to Dicey, the prerogatives are merely the residue of the discretionary and arbitrary authority which at any time is legally left in the hands of the Crown. According to Coke, prerogatives are those powers, pre-eminences and privileges which the law gives to the Crown. According to Blackstone, a prerogative is "that pre-eminence which the King hath over and above all other persons, not by virtue of any law, but out of its ordinary course in right of his royal dignity."

There was a time when the King had a very large number of prerogatives, but their number has lessened in the course of time. Some of these prerogatives have been taken away by Acts of Parliament and others have disappeared because those were not exercised for a long time. However, a particular thing to be noticed regarding the prerogatives of the Crown is that the *prerogatives of the King have become the privileges of the people*.

The following are some of important prerogatives of the crown:—

(1) The King is the fountain of justice. All justice is done in the name of the King. It is his duty to maintain the peace of the country. A criminal is punished because he is guilty of violating the peace of the King. The Crown can stop any prosecution. It can also pardon any convicted offender. It can remit or reduce a sentence on the advice of the Home Secretary. It also grants special leave to Appeal from courts throughout the British Empire to the Judicial Committee of the Privy Council.

Pardons under the prerogative are of three kinds. A free pardon cancels both the sentence and the conviction. A commutation or conditional pardon substitutes one form of punishment for another. Usually, on the recommendation of the Home Secretary, a

capital sentence is commuted to imprisonment for life. Remission reduces the amount of a sentence without changing its character. A part of the sentence or fine may be remitted.

As regards reprieve or respite, it merely implies the postponement of the carrying out of a sentence. It is largely resorted to in capital cases pending the formal grant of a commutation or conditional pardon.

It is to be observed that there are certain limitations on the exercise of the prerogative of pardon. One limitation is that the offence must be of a public character and the Crown has no power to remit judgment in suits between subject and subject. Another limitation is that pardon cannot be used as a licence to commit crimes. Still another limitation is that a pardon only relieves from the penalty resulting from criminal proceedings and not from conviction unless a free pardon is granted. It is not certain whether there is any power to sanction a general reprieve for persons convicted of capital murder. This doubt is based on the Bill of Rights which provides that the use of dispensing power is illegal. No motion is allowed in the House of Commons if the Home Secretary refuses to recommend a reprieve or pardon while the sentence is pending.

(2) The King summons, prorogues and dissolves Parliament. While exercising the power of dissolving the House of Commons, the King is required to act according to the will of the nation. The exact constitutional position was described in 1923 by Earl of Oxford and Asquith in these words: "The dissolution of Parliament is in this country one of the prerogatives of the Crown. It is not a mere feudal survival, but it is a part, and I think a useful part, of our constitutional system, for which there is no counterpart in any other country, such, for instance, as in the United States of America. It does not mean that the Crown should act arbitrarily and without the advice of responsible ministers, but it does mean that the Crown is not bound to take the advice of a particular minister to put its subjects to the tumult of a series of general elections so long as it can find other ministers who are prepared to give it a trial." (The House of Commons is dissolved only when it is felt that it does not represent the opinion of the country.) The King has the right to assent or refuse to assent to the bills passed by Parliament. By means of an Order-in-Council or Letters Patent, the Crown can legislate for certain colonies.

(3) The King is the Commander-in-Chief of the armed forces of the country. The Navy is also maintained under the prerogative of the Crown. An annual Act of Parliament legalises the Army, Air Force and the Marines. However, their control, organisation and disposition are within the prerogative of the Crown. All officers of the Army and Air Force have their commissions from the King.

(4) The King is the sole fountain of honour. He alone can create Peers and confer honours and decorations. There is no limit to the number of peers the King can create. That depends



upon the circumstances. William IV gave an assurance to Earl Grey that he would create as many peers as were necessary to secure the passage of the Reform Act through the House of Lords. To quote, "The King grants permission to Earl Grey and to his Chancellor, Lord Brougham, to create such a number of peers as will be sufficient to ensure the passing of Reform Bill, first calling up peers' eldest sons, William R. Windsor, May 17, 1832." However, the power to create peers cannot be exercised by the King indiscriminately. In the words of Lord Lyndhurst, "It does not follow that this or any other exercise of the prerogative, merely because it is strictly legal, is, therefore, consistent with the principle of the constitution. The sovereign may, by his prerogative, if it should be thought proper, create 100 peers with discernible qualities in the course of a single day and this would be strictly legal; but everybody must feel and know that such an exercise of the prerogative of the Crown would be a flagrant violation of the principle of the constitution."

(5) The King is never an infant. Even when the King is actually an infant, the assent given by him to bills passed by Parliament makes them valid. It is presumed that the King is always fit to transact the business of the State.

(6) The King is the representative of the people in the international field. He enters into agreements and treaties and no formal sanction of Parliament is necessary.

(7) The King receives ambassadors and Ministers from foreign countries.

(8) The King never dies. He is immortal. As soon as one king dies, he is succeeded by another. Charles I was hanged in 1649 and he was actually succeeded by his son Charles II in 1660, but that year is counted as the eleventh year of the reign of Charles II.

(9) In times of emergency, the Crown can demand personal service within the State. The Crown can requisition British ships in territorial waters in times of urgent national necessity and that is not restricted to invasion or imminent danger. According to the right of Angary, the Crown can requisition in times of war any chattels belonging to a national of a neutral state found within the realm. However, compensation has to be paid.

(10) The Crown can restrain any person from leaving the realm to evade justice. An absconding debtor can be checked. The Crown can restrain a British subject from leaving the country in times of war. He can also be recalled from abroad.

The King exercises his prerogatives on the advice of the Cabinet and not otherwise. As a matter of fact the prerogatives of the Crown have become the privileges of the people and they are exercised in the interests of the people. It is rightly pointed out that after the Glorious Revolution of 1688, "*the Crown was made, the Crown was limited, the Crown was paid.*"

If there is a dispute as to whether a particular power is to be exercised by virtue of a prerogative or a statute, the matter is to be decided by the courts of law. It is for the latter to decide as to whether a prerogative exists in a particular case or not. However, when the existence and nature of the prerogative has once been established by a court of law, the manner of its exercise cannot be questioned in any court. That can be done only in the British Parliament. The plea of state necessity is not a valid one for an unlawful act. According to Lord Camden, "With respect to the plea of state necessity, a distinction that has been aimed at between state offences and others, the common law does not understand that kind of reasoning nor do our books take notice of any such distinctions." (*Entick v. Carrington*).

It is to be observed that many prerogatives of the Crown are at present regulated by statute. In the case of *Attorney-General v. De Keyser Royal Hotel*, the relationship between prerogative powers and statutory powers was clearly brought out. It was held by the House of Lords in 1929 that as the prerogative had been suspended by a statute, the Crown was not entitled to act under the prerogative. There was no excuse for reverting to prerogative powers when the legislature had given to the Crown statutory powers which covered all that was necessary for the defence of the country. Acts of Parliament can abrogate a prerogative power by express words. If a statute covers the sphere of a prerogative power, it merely suspends its exercise, but does not abrogate it.

The prestige of the Crown is surrounded by "the element of mystic magnificence which resides in its long history and hereditary situation. . . . Its position does not make it a force—a force which can be overcome by a man of strong character, but to which man of some generosity and perhaps some weakness may succumb."

### Position of the King of England

To begin with, the King of England possessed and exercised a large number of powers. However, during the course of centuries, most of his powers were taken away by Parliament and the Cabinet. The establishment of ministerial responsibility in England virtually reduced the King of England to a non-entity. No wonder, the King of England is described as a figurehead. He has also been called a rubber stamp.

It goes without saying that the King of England can act only on the advice of his ministers. Every act of the King has to be countersigned by some ministers and nothing ordered by him alone is likely to be acted upon. However, this does not mean that the King of England is a superfluous entity. It was rightly pointed out by Bagehot that the King of England had three powers and a

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1. According to Gladstone, "There is not a moment in the king's life, from his accession to his demise, during which there is not some one responsible to Parliament for his public conduct, and there can be no exercise of the Crown's authority for which it must not find some minister willing to make himself responsible."



wise King need not have any more. According to him the King has the power to advise the ministers, warn the ministers, and encourage the ministers.

(1) As regards advice, the King is ordinarily consulted on all important matters of state by the Ministry in power. Either the Prime Minister or some other minister seeks the advice of the King and usually that advice has considerable influence in determining the final decision. There is a special reason why a considerable weight is given to the advice of the King. Undoubtedly, the King is above party politics. He has no axe to grind. All his actions are actuated by the highest interests of the country and no wonder it is expected that due weight should be given to the impartial advice given by the King of England. It cannot be denied that the advice of the King is based on experience and knowledge. While the ministers come and go, the King continues. Queen Victoria ruled England for 64 years and George V for 26 years. No wonder, the King comes to acquire a lot of knowledge regarding the affairs of the State and all this experience is handy for the ministry in power.

According to Sir Robert Peel, "The King after a reign ought to know much more of the working of the machine of government than any other man in the country."

(2) The King has the power to *warn* the ministry. If the King honestly feels that the particular policy followed by the ministry in power is likely to land the country in trouble, he can give a warning and that warning cannot be ignored by the ministry. If it comes to be known to the people that although the King gave a timely warning to the ministry and in spite of that the ministry bungled, the party in power is bound to lose heavily. About the power of warning, Bagehot remarks: "He would find that his having no other powers would enable him to use these with singular effect. He would say to his minister that the responsibility of these measures is upon you. Whatever you think best must be done. Whatever you think best shall have my full and effectual support. But you will observe that for this reason and that reason what you propose to do is bad; for this reason and that reason that you do not propose is better. *I do not oppose, it is my duty not to oppose; but observe that I warn.*"

(3) The King of England has also the power to *encourage* the ministry. If he finds that the policy followed by the ministry is in the interests of the country, he can encourage it in pursuing the same. The feeling that their policy has the full support of the King must be a source of strength to the ministry.

In addition to the above three powers the King of England exercises a lot of influence on various affairs of the country. In this field, the personal factor has played a very important part. It is well known that Edward VII played an important part in bringing France and England together. His love for France and hatred against Germany had far-reaching consequences. That was



partly responsible for the Entente Cordiale of 1904 between England and France. In 1939, George VI went over to France and that also brought the two countries together on the eve of World War II. The same King went over to the U.S.A. and Canada and it cannot be denied that his visit to those countries must have brought the two countries together. The importance of the personal touch cannot be over-emphasized.

A study of the biographies of George V by Sir Harold Nicolson and of George VI by Sir John Wheeler-Bennett shows that the part played by the Kings in the 20th century has not been insignificant. The King is not merely a cipher or a mouthpiece of his constitutional advisers. The following extract from the diary of King George VI for 23rd August, 1945 speaks for itself: "I asked him (Attlee) whom he would make Foreign Secretary and he suggested Dr. Hugh Dalton. I disagreed...and said that...I hoped he would make Mr. Bevin take it. He said he would".

According to Dr. Jennings, the King sees all Cabinet papers, whether they are circulated by the Cabinet Office or by the departments. Most papers, other than those relating to purely party matters, which go to the Prime Minister, go to him. He receives the Cabinet agenda in advance. He can discuss memoranda with the ministers responsible for them. He can ask for information on the items (rare though they are) which are not supported by memoranda. If he requires information from a department, he can ask for it. If other information would be helpful, he can ask his private secretary to obtain it. Like a Cabinet minister, he receives the daily print of Foreign Office telegrams and can draw the attention of the Foreign Secretary or the Prime Minister to anything in them which he dislikes or about which he is doubtful. Like a Cabinet minister, again, he receives the reports of the Defence Committee and, like the Prime Minister, he is provided with copies of reports from its sub-committees, including the Chiefs of Staff Committee. He is furnished with the summary of the Commonwealth press circulated by the office of Commonwealth Relations. He has personal contacts and conducts a regular correspondence with the Governors-General of the Dominions, the Governors of the more important Colonies, and the British Ambassadors to foreign countries. Whenever a person is appointed to any of these posts, he has an audience with the King and is invited to communicate anything of importance with which he may meet during his term of office.

In short, the King is better informed than the average Cabinet minister on the matters which are brought before the Cabinet. In some respects, notably on foreign affairs and on matters dealing with the Commonwealth, he may be better informed than the Prime Minister. What is more, though a minister has a department to administer and the Prime Minister has to run the parliamentary and party machines, the King can devote almost the whole of his time to what may be called Cabinet business. Also, while Prime Ministers and Ministers change, the King goes on until he dies.



Cabinet business is thus continuous for him and a change of Government is merely a change of personnel. Apart from all this, his views may be particularly valuable precisely because they are not clouded by a political controversy. The parliamentary and party aspects of any question are, of course, fundamentally important and are matters of primary consideration for every Government: but it may be extremely useful to have an outside opinion, which has no party objective at all, on proposals which the party politicians must ultimately settle. The Whips may advise that a decision will be popular or unpopular in the House of Commons or in the constituencies; that is one aspect, and a very important aspect; but the King may advise that the decision will cause difficulties in Burma or Patagonia or will create trouble for his next Government.

Thus, the King may be said to be almost a member of the Cabinet and the only non-party member. He is, too, the best-informed member and the one who cannot be forced to keep silent. His status gives him power to press his views upon the minister making a proposal and (what is sometimes even more important) to press them on the minister who is not making proposals. He can do more, he can press those views on the Prime Minister, the weight of whose authority may in the end produce the Cabinet decision. He can, if he likes to press his point, insist that his views be laid before the Cabinet and considered by them. In other words, he can be as helpful as he pleases; and he is the only member of the Cabinet who cannot be informed that his resignation would assist the speedy despatch of business. Naturally, the extent to which he uses these powers depends upon the extent to which he forms opinions of his own. It depends, too, on the manner in which he is "managed" by the Prime Minister.

A reference may be made to the opinions of some great writers on the position of the King. According to Lord Esher, "If the constitutional doctrine of ministerial responsibility means anything at all, the King would have to sign his own death warrant if it were presented to him for signature by a minister commanding a majority in Parliament. If there is any tampering with the fundamental principle, the end of the monarchy is in sight." According to Keith, the King is the guardian of the constitution and it is his duty to preserve the essentials of the constitution. According to Laski, "Mr. MacDonald was as much the personal choice of George V as Lord Bute was the personal choice of George III. He is the only modern Prime Minister who has been unencumbered by party support in his period of office; he provided only a name, while Mr. Baldwin supplied both the legions and the power that goes with the legions." Again, "The fact that royal influence is both constant and pervasive, is beyond discussion. The mere rumour that King Edward VIII was dissatisfied with Mr. Baldwin's policy for the distressed areas, made that policy a theme of intense and even angry national discussion throughout the brief period of his reign. The determination of George V, as he told

Esher, to take a special interest in imperial concerns is hardly likely to be unconnected with the emphasis they received from his successive governments. An energetic monarch, skilfully advised, can still play a considerable part in shaping the emphasis of policy."

According to Lord Attlee, "Britain has been very fortunate in having monarchs who understand how to function in a democratic society and will act accordingly."

### Why Kingship is not abolished in England?

A very pertinent question which is usually asked is that if the King of England is merely a figurehead, why the institution of kingship is not abolished in England. It is true that during the time of Queen Victoria there was a demand for the abolition of monarchy in the country and the setting up of a republic, but at present there seems to be a general feeling that kingship should be allowed to continue. The institution of kingship has become immensely popular in England. It is considered to be a part and parcel of the administrative system of the country. It is difficult to conceive of the English administrative system without the king. An idea of popularity of the English King can be had from the fact that when George VI fell ill, thousands of Englishmen assembled every evening to hear the news regarding the health of the King. The English King has also popularised himself with the people by doing many things which aim at the betterment of the lot of the poor people. It is pointed out that there are more pictures of the royal family in the newspapers of the poor people than in those of the rich people.

According to Professor Laski, "Monarchy, to put it bluntly, has been sold to democracy as the symbol of itself, and so nearly universal has been the chorus of eulogy which has accompanied the process of the sale that the rare voice of dissent has hardly been heard. It is not without significance that the official newspapers of the Trade Union Congress devote more space to the news and pictures of the royal family than does any of its rivals." Again, "Some of the tributes devoted to the persons of the monarch since the war would certainly have been more suited to the description of a demi-god than to the actual occupants of the throne in the last sixty years." According to Dr. Jennings, "Democratic government is not merely a matter of cold reason and prosaic policies. There must be some display of colour and there is nothing more vivid than royal purple and imperial scarlet." According to Sir Winston Churchill, English kingship "is the most deeply founded and dearly cherished by the whole association of our peoples." To quote Jennings again, "We can damn the government and cheer the King." According to Balfour, "British kingship like most other parts of our constitution, has a very modern side to it. Our king, in virtue of his descent and of his office, is the living representative of our national history. So far from concealing the popular character of our institutions, he brings it into prominence. *He is not the leader of a*



*party nor the representative of a class; he is the chief of the nation. He is everybody's king."*

In August, 1957, Lord Altrincham, a young Conservative Peer, criticized Queen Elizabeth. He described the speech of the Queen as a "pain in the neck" and her utterances as those of a "priggish school girl". He called for a "truly classless Commonwealth Court" to replace her present entourage of "people of the tweedy sort". His views were supported by *The Reynold News* on the ground that he "had said aloud what many people are thinking: Buckingham Palace is not in tune with the Britain of 1957." However, Lord Altrincham was condemned by the public at large. There was a heated controversy in the country. Lord Altrincham was actually slapped when he was leaving the television studio after giving his speech. The man who slapped him remarked thus: "*That's for insulting the Queen.*"

The king is an important part of the social structure and exercises a lot of influence in that capacity. The royal family sets the example in morality, fashions, art and literature. When in 1939, Princess Margaret and Princess Rose started going on evening walks without hats, the children of London adopted that as a fashion. That resulted in a fall in the sale of hats for children. It is reported that a deputation of the dealers in hats for children waited upon the Queen and requested her to save them from ruin. Consequently the Queen asked her daughters to use hats in the walks so that the children may follow them. The presence of members of the royal family on the occasion of ceremonies such as the laying of foundation-stones, the launching of ships and the opening of new works, enables the people of opposing views to associate without suppressing their mutual opposition. The Jubilee celebrations in the reign of Queen Victoria "strengthened popular support for the imperialistic ideas of the Conservative government then in office." The Silver Jubilee celebrations of 1935 in the reign of George V strengthened the National Government whose strength was declining at that time.

The advocates of kingship point out that the institution of kingship does not stand in the way of the smooth working of the parliamentary system in the country. If England is to have a parliamentary system, she must have a titular head. He can either be like the King of England or like the President of France under the Fourth Republic. There is going to be no saving even if the French pattern is adopted. The President is likely to be as expensive as the King of England. However there will be the extra trouble of an election. It is pointed out that it is no use bothering about the election of a person who is to exercise practically no powers. There will be much ado about nothing.

The King of England is the symbol of Imperial unity. He is the "golden link of the Empire". He is a necessary link with the

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1. According to G. M. Trevelyan, "The British Empire is held together  
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self-governing dominions. According to General Smuts, "You cannot make a republic of the British Commonwealth of Nations." According to Prof. Dicey, "Any great change in the form of the Constitution of England, *e.g.*, the substitution of an English Republic for a limited monarchy, might deeply affect the loyalty of all the British colonies. Can any one be certain that New Zealand or Canada would at the bidding of the Parliament of the United Kingdom, transfer their loyalty from George V to a President chosen by the electorate of the United Kingdom, and this even though the revolution were carried out with every legal formality, including the assent of the king himself, and even though the King were elected the first President of the new Commonwealth?... The King is what the Imperial Parliament has never been, the typical representative of Imperial unity throughout every part of the Empire."

The institution of kingship in England is not superfluous. The King performs some very important and essential functions. He plays an important part during the interval between the resignation of one ministry and the coming in of the new ministry. The choice of the Prime Minister is made by the King although in certain cases he may not have much discretion. On many occasions Queen Victoria exercised a decisive influence on public policies and measures. She prevented war between England and France in 1840. In 1861 she averted a war between England and the U.S.A. in connection with the Trent Affair. She mediated in 1869 on the question of the disestablishment of the Irish Church. In 1884 she brought about a sensible settlement between a Conservative House of Lords and a Liberal House of Commons. In 1850, she wrote thus to Palmerston: "The Queen requires, first, that Lord Palmerston will distinctly state what he proposes in a given case in order that the Queen may know as distinctly to what she is giving her royal sanction. Secondly, having once given her sanction to such a measure, that it be not arbitrarily altered or modified by the minister..... She expects to be kept informed of what passes between him and the foreign ministers, before important decisions are taken based upon that intercourse; to receive the foreign dispatches in good time; and to have the drafts for her approval sent to her in sufficient time to make herself acquainted with the contents before they must be sent off". It is pointed out that Edward VII also played an important part in ending the isolation of England in the international field. He not only visited the continent many a time, but also entertained foreign dignitaries and personally carried on a huge correspondence with the heads of foreign States. This was responsible for the

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by a constitutional monarchy, which is none other than the old Constitutional Monarchy of England, married to the old Monarchy of Scotland and extended to embrace new nations overseas. It owes constitutional character not to any single event or movement, but to a process of growth at least as old as the Norman Conquest. We might, indeed, look back still farther, to the Saxon kings under whom the realm of England and its shires came into existence, most of all the Alfred, the best of our kings, who in his life and character seems an English Constitution in himself."



Entente Cordiale of 1904 and the Anglo-Russian Conventions of 1907. He not only encouraged the army reforms of Haldane but also tried to persuade the House of Lords not to reject the budget of 1909. He was always accessible to his ministers and took pleasure in discussing with them the affairs of the State. A similar part was played by George V with regard to the Irish question and the Parliament Act of 1911. In 1914, he called a conference of the leaders of Ireland and England and requested the parties concerned to come to a peaceful settlement. He also helped Ramsay Macdonald in 1931 to form the National Government. Although he had lost the support of his party the help of the King enabled him to remain in power for 4 years. The royal establishment does not cost much. The country will not be a gainer financially if kingship is abolished and provision is made for an elected President. A lot of money is spent on the head of the State of every country. No wonder, the shrewd Scots have not demanded the abolition of monarchy.

The English king provides leadership in matters of morals, manners and tastes. He gives a sense of stability. It has rightly been pointed out that "with the King in Buckingham Palace people sleep the more quietly in their beds."

Edward Jenks gives his estimate of kingship in these words: 'In the first place, the king supplies the vital element of personal interest to the proceedings of government. It is far easier for the average man to realize a person than an institution. Even in the United Kingdom, only the educated few have any real appreciation of such abstract things as Parliament, the Cabinet, or even 'the Crown'. But the vast mass of the people are deeply interested in the king as a person, as is proved by the crowds which collect whenever there is chance of seeing him; and it is possible that the majority of the people, even of the United Kingdom, to say nothing of the millions of India, believe that the Government of the Empire is carried on by the king personally. He, therefore, supplies the personal and picturesque element which catches the popular imagination far more readily than constitutional arrangements, which cannot be heard or seen; and a king or queen who knows how to play this part skilfully, by a display of tact, graciousness, and benevolence, is rendering priceless service to the cause of contentment and good government.... Very closely allied to this personal character of the king is the great unofficial and social influence which he wields, and not he alone, but the queen, and, in a lesser degree, the other members of the royal family. Their influence in matters of religion, morality, benevolence, fashion and even in art and literature, is immense. How much good was done in this way by the late Queen Victoria, is a matter of common knowledge; it was one of the striking triumphs of her long reign. And, be it remembered, in such matters the monarch is in no way bound to follow, or even to seek, the advice of his ministers; for such matters lie outside the domain of politics.... A king who is fully informed of affairs becomes, in course of time, if he is an able man, an unrivalled storehouse of political experience. Minis

ters come and go; they are swayed, it is to be feared, by the interests of their party as well as by those of the state; they may have had to make, in order to obtain support, bargains which tie their hands; they have ambitions for the future, which they are loath to jeopardize. Not so the King. He is permanent; he is above all parties; he does not bargain for places and honours; he has nothing in the way of ambition of securing his country's welfare. So he can say to his ministers, with all the weight of his experience and position: 'Yes, I will, if you insist, do as you wish; but, I warn you, you are doing a rash thing. Do you remember so and so?' Only, the king must not give his warning in public; he must not seem to overrule his ministers. But a minister will, unless he is an exceptionally rash person, think many times before disregarding a warning from the King." (*Government of British Empire*, pp. 37-40.)

According to Ogg and Zink, "The continuance of kingship has proved no bar to the progressive development of domestic government. If royalty had been found blocking the road to fuller control of public affairs by the people it is inconceivable that all the forces of tradition could have pulled it through the past three-quarters of a century. The royal establishment does not cost the nation much, considering the returns of the investment in actual figures, the outlay is only a small fraction of one per cent of the total British budget. The Cabinet system upon which the entire scheme of British Government hinges, has rarely or never proved a workable place without some titular head, dignified and detached figure, whether a King, or as in France, a President with some of the attributes of Kingship."

According to Prof. Laski, "The system of limited monarchy has been an unquestionable success. It has, so far, trodden its way with remarkable skill amid the changing habits of the times. Its success, no doubt, has been the outcome of the fact that it has exchanged power for influence; the blame for errors in policy has been laid at the door of ministers who have paid the penalty by loss of office. An active King, whose opinions were a matter of public concern, is unthinkable within the framework of our Constitution." (*Parliamentary Government in England*, p. 395.)

According to Lowell, "*If the king is no longer the motive power of the state, it is a spur on which the sail is bent, and as such it is not only a useful but an essential part of the vessel.*"

### The Privy Council

The Privy Council has grown out of the Curia Regis of the Normans and the Witenagemot of the Anglo-Saxons. In the Tudor period, it was all-powerful and was rightly described as the Tudor maid of all work. As the membership of the Privy Council increased, it became an unwieldy body for purposes of deliberation. No wonder, Charles II set up what is known as the Cabal. The British Parliament resented the supersession of the Privy Council, and tried to restore the same by a provision in the Act of



Settlement. The Act of 1701 provided that all the work of the Privy Council was to be done in the Privy Council. However, the effort proved to be a failure and the growth of the Cabinet system threw the Privy Council into the background.

To begin with, the Privy Council was both an executive and a deliberative body. The last occasion on which the whole of the Privy Council met for purposes of deliberation was in 1914 when Queen Anne died. At present, it is still the executive Government.

The Privy Council consists of 330 members. The Archbishops of Canterbury and York are the members of the Privy Council by prescriptive right. The Bishop of London, the Law Lords, ambassadors to foreign countries, the Speaker of the House of Commons, etc., are usually included in the Privy Council. Some persons from the Dominions are also made Privy Counsellors. In some cases, persons who have distinguished themselves in science, art and literature are also made Privy Counsellors. The members of the Cabinet are also made Privy Counsellors.

The whole of the Privy Council is never summoned. However, it assembles automatically at the time of the death of a king and also for the coronation ceremony. Meetings of the Privy Council are held to transact formal business. It adopts and issues Orders-in-Council and Proclamations. A quorum of 90 is enough for its work.

It is true that the Privy Council has lost its consultative and administrative functions, but the Judicial Committee of the Privy Council, which was created in 1833, still performs a very useful function.

### SUGGESTED READINGS

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|------------------------|---|
| <i>Barker, E.</i>      | : Britain and the British People.                               |
| <i>Jennings, W. I.</i> | : The British Constitution.                                     |
| <i>Jennings, W. I.</i> | : Cabinet Government.   |
| <i>Keith, A. B.</i>    | : The Constitution of England from Queen Victoria to George VI. |
| <i>Keith, A. B.</i>    | : The King and the Imperial Crown.                              |
| <i>Keith, A. B.</i>    | : The British Cabinet System.                                   |
| <i>Laski, H. J.</i>    | : The Crisis and the Constitution, 1932.                        |
| <i>Martin, K.</i>      | : The Magic of Monarchy.  |
| <i>Petrie, Charles</i> | : The Modern British Monarchy.                                  |

## CHAPTER 3

### THE CABINET SYSTEM

#### Development of the English Cabinet

According to Sidney Low, "Cabinet is the responsible executive having complete control of the administration of the general direction of national business, but exercising this vast power under the strict supervision of the representative chamber to which it is accountable for all its acts and omissions." According to Prof. Munro, "Cabinet may briefly be defined as the body of royal advisers chosen by the Prime Minister in the name of the Crown, with the approval of a majority in the House of Commons." The remarkable thing to be noticed about the growth of the Cabinet system is that it grew by slow degrees.

It is customary to regard the so-called "Cabal" of Charles II as the immediate forerunner of the Cabinet. Cabal was a group of persons whom Charles II consulted from the Privy Council and whose advice he took informally. As the Privy Council had grown out of the great Council of the Normans, likewise "Cabal" grew out of Privy Council. However, as a matter of fact, the practice of referring important matters of the Privy Council to a smaller body grew even before the time of Charles II. Both the practice and the name Cabinet Council existed in the reign of Charles I also. However, the conditions after 1660 were favourable for the growth of Cabinet system. Parliament had already won a victory over the king and it was hoped that no king would be able to challenge its authority. The Cabinet system could grow only when the supremacy of Parliament was established and the position of the King was subordinated. Such a thing was possible after the Restoration and particularly after the Glorious Revolution of 1688.

Not much progress was made in the time of Charles II. As "the great size of the Council made it unfit for secrecy and despatch in many great affairs", Charles II surrounded himself with half a dozen ministers who not only enjoyed his confidence but also were influential in the Parliament. He looked up to them to secure from Parliament the legislation he required. He also referred to them the important questions with which he was confronted. According to Clarendon, these ministers "had every day fallen with some selected persons of the House of Commons who had always served the king and upon that account had great interest in that assembly, and in regard to the experience they had and all their good parts were hearkened to with reverence. And with those they consulted in what method to proceed in disposing the House, sometimes to propose, sometimes to consent to, in what should be most necessary to the public; and by them to assign parts to every man whom they found disposed and willing to concur in what was to be desired; and all this without any noise or bringing many together to



design whichever was and ever will be ungrateful to Parliament and ever it may be succeeded for a little time, will in the end be attended by prejudice."

One can find the germs of the latter Cabinet system in the time of Charles II. There was a small group of ministers who gave collective advice to the king and helped him to get through Parliament the legislation which he desired. However, the system was absolutely imperfect. While making his choice of the ministers, the king did not take into consideration the fact as to whether they were popular with parliament or not. He also did not bother about the party to which they belonged. These ministers were responsible to the King himself and not to Parliament. They were not considered to be the agents of Parliament to control the authority of the King. As a matter of fact, the name "cabinet" first came into use as a term of reproach. This arose out of the king's habit of receiving the members in a small private room or cabinet in the palace.

The device of the cabinet met a serious need. It became indispensable after the compromise of 1660. It has rightly been pointed out that the English system of vesting the executive authority in a Cabinet quietly chosen by the legislators and held under close control by it, was the method finally officially devised to carry out in practical shape the sovereignty of Parliament which had resulted from the constitutional advance of the 17th century.

By the time of the Glorious Revolution of 1688, the Cabinet was a half-formed and misunderstood institution. The Cabinet system was not conceived of at all. However, the Glorious Revolution and the settlement that followed, paved the way for the permanent supremacy of Parliament and thereby made the development of Cabinet system of government inevitable. William III retained complete freedom in the choice of ministers and exercised considerable control over their actions. However, an important development took place during his reign. To begin with, he tried to rule the country with ministers chosen from both the Whig and Tory parties. However, he felt that the system did not work smoothly. Consequently, in 1693-96, he gathered around him a body of advisers from the Whig party only. Although it was done by William III only for the purpose of convenience, the convention became established to select the ministers only from that party or faction which had effective control over the House of Commons.

The new development was not liked by Parliament. As a matter of fact, an attempt was made by the Act of Settlement in 1701 to crush the Cabinet system in its infancy. The Act provided that "no person who has an office or a place of profit under the King or receives a pension from the Crown shall be capable of serving as a member of the House of Commons." So far as this provision aimed at checking the control of the King over Parliament by means of giving pensions or appointments and thereby forcing the members of Parliament to do what he wanted them to do, the attempt was laudable. However, the trouble with

this measure was that its strict enforcement would have resulted in the destruction of the Cabinet. If the servants of the king could not sit in the House of Commons, there was no possibility of the growth of ministerial responsibility as required by the Cabinet system. No wonder, the Place Act of 1707 provided that no person holding any office created after October 1705 or certain other offices named was to sit in the House of Commons and any member accepting any office other than those was to vacate his seat but could be re-elected.

Another provision of the Act of Settlement laid down that all business of the Privy Council was to be transacted in the Privy Council and nowhere else. The members of the Privy Council were to furnish evidence of their responsibility by attaching their signatures to the resolutions to which they consented. According to Robertson, "Its object was to restore the Privy Council as the legal and constitutional organ of policy, to condemn the nascent Cabinet...to secure that administrators as Privy Councillors should be legally responsible (*i.e.*, liable to impeachment) for their share in advising measures disapproved by Parliament, and to obtain a record probably in a court of law." The investigations into the responsibility for Partition Treaties arranged by William III were responsible for this provision. If this provision had remained on the Statute Book, development of the Cabinet would have been stopped. If all the work of the Privy Council were to be done in the Privy Council, there was no opportunity for the Cabinet which is an inner circle within the Privy Council itself. If the ministers were to sign their names along with the advice they gave to the King, they would prefer not to do so. That would have interfered with the free discussion in the cabinet. That would have made the ministers reluctant to advise the king for fear of impeachment. That was a very primitive method of making the ministers responsible for the acts of Government. Happily for England, this provision was repealed in 1703 in the time of Queen Anne.

Moreover, it became a practice that when an important new office of political nature was created a special statutory provision permitted the holder to have a seat in the House of Commons. It is true that later Acts unconditionally barred from Parliament all the cases of subordinate officials including holders of places created before or after 1705, but officers of a ministerial grade were never touched by such legislation. Thus, the way was kept open for the long line of development which ultimately gave the Cabinet system to England.

The Cabinet system got a golden opportunity to develop unhampered during the reigns of George I and George II. Practically from 1714 to 1717 the Whig oligarchy was in power. George I did not know the English language and consequently found it difficult to preside over the meetings of the ministers. Being advanced in years he made no serious effort to understand the English language both before or after his accession to the throne. Moreover, the English administrative system was a complicated one and



George I had neither the brain nor the will to understand it. The result was that he left everything in the hands of the Whigs. The latter made full use of the patronage that fell into their hands. They were able to manage the House of Commons by fair or foul means. In the absence of the King, Walpole began to preside over the meetings of the Cabinet. Thus the office of the Prime Minister came into existence. It is true that this office was unpopular with the people and one of the charges brought against Walpole was that he had become the Prime Minister, but such a development was inevitable on account of the indifference of George I and George II to British politics. The absence of the King became a permanent feature. Even when George III established his personal rule, he did not attend the meetings of the Cabinet. It was during the period of Whig supremacy that many features of the cabinet system were developed. All the ministers belonged to the same party. They all worked under one head, the Prime Minister. The principle of ministerial responsibility was also established. When Walpole was defeated in 1742 in the House of Commons he resigned.

In 1760, George III became the King of England. He made up his mind to destroy the Cabinet system and establish his personal rule in the country. He claimed himself to be a Whig of the Revolution. His contention was that he was prepared to accept all those limitations on his power which were imposed by the Bill of Rights and the Act of Settlement but nothing else. He also maintained that the growth of the Cabinet system during the period of Whig supremacy was not a legal one and consequently he was not bound to follow it. It may be that the ignorance of the English language and the lack of knowledge of British politics had helped the growth of the Cabinet in the time of George I and George II, but George III was determined to exercise all the powers himself. As a matter of fact he was able to dispose of the Whigs and establish a ministry of his own choice under the leadership of Lord North. However, his attempts failed on account of the American War of Independence and the British defeat. After 1783 when Pitt the Younger became the Prime Minister, George III left everything in his hands because he was his own nominee and he was also acceptable to the people.

It is to be noted that even as late as the last quarters of the 18th century, there was no general understanding of what we now call the Cabinet system of government. The framers of the Constitution of the United States did not make any reference to such a system. The Act of 1791 which gave to Upper and Lower Canada the same type of government which existed in England, did not provide for a Cabinet system. Blackstone in his commentaries on the English Constitution did not refer to the Cabinet system. De Lolme also did not refer to the Cabinet system in his description of the English Constitution. It was only in 1867 that Bagehot gave a full description of the Cabinet system in his monumental work on the English Constitution.

The Cabinet system took its final shape during the 19th century. It was established that all the members of the Cabinet must belong to Parliament. They should also have a majority in the House of Commons. Their responsibility must be collective. There must be homogeneity and they must recognise the Prime Minister as their head.

When World War I started in 1914, Asquith was the Prime Minister. In 1916, Lloyd George became the Prime Minister. He formed a Coalition Cabinet which lasted throughout the war. For efficient and quick disposal of work, Lloyd George set up a War Cabinet of five members. In 1917, a sixth member was added and he was General Smuts, the Prime Minister of South Africa.

To meet the economic crisis of 1931, a Coalition Government was set up under the leadership of Ramsay Macdonald although he himself was in a minority. When the question of protection arose the Liberal members were allowed to differ on that issue. The agreement to differ was adopted with a view to meeting the situation.

During World War II, the leaders of all the parties were asked to join the Government. The result was that both the Labour and Liberal members joined the Cabinet of Mr. Churchill.

Since 1916, there has been a Cabinet secretariat to help the cabinet in the performance of its functions. According to Jennings, its duties are the following:—

1. To circulate the memoranda and other documents required for the business of the Cabinet and its committee.
2. To compile under the direction of the Prime Minister the agenda of a Cabinet committee.
3. To issue summons of meetings of the Cabinet and its committees.
4. To take down and circulate the conclusions of the Cabinet and its committees and to prepare the reports of the Cabinet committees.
5. To keep special instructions of the Cabinet, the Cabinet papers and conclusions.

### **Cabinet and Ministry**

A distinction can be made between the Cabinet and the Ministry. All members of Parliament who hold important executive posts and resign along with the Cabinet form the ministry. On the other hand, the Cabinet consists of a smaller number of ministers. The Cabinet is an inner circle within the ministry. The ministry never meets as a body but the Cabinet meets very frequently. While the Cabinet chalks out the policy to be followed by the Government, the ordinary ministers are merely the heads of the various departments. The Ministers of the Crown Act of 1937 tells us as to who are the members of the Cabinet. In addition to the Prime Minister who draws a salary of £10,000, 17 other ministers draw a salary of £5,000 a year. Only five other



ministers can draw a salary of £5,000. It is for the Prime Minister to decide as to who will be the members of the Cabinet.

*Growth in size of Governments*

	1900	1910	1917	1920	1930	1940	1950	1960
Cabinet Ministers	19	19	5	19	19	9	18	19
Non-Cabinet Ministers	16	7	33	15	9	23	20	26
Junior Ministers	15	22	33	33	27	32	35	35
Royal Household	16	14	14	13	7	11	8	9
Total	60	62	85	80	62	77	81	83
No. of MPs in the Government	33	43	60	58	50	58	68	65
No. of Peers included in the Government.	27	19	25	22	12	19	13	18

Reference may be made to what is known as the inner cabinet. This has been explained by Sir Sidney Low in these words: "For the ministerial and administrative cabinet collectively responsible to parliament, officered and recruited entirely from the parliamentary circle, intimately related to the House of Commons, framed on rigid party lines, and conferring with absolute secrecy, we have a cabinet which is not a ministry and a ministry which is not a cabinet; a cabinet which directs but does not administer; a ministry which has exchanged collective responsibility for individual responsibility; a cabinet which has very loose connection with the House of Commons, and for some purpose is virtually independent of it; which stands outside our party divisions; which admits to its confidential deliberations representatives of all the great states of the Empire as well as those of the United Kingdom; and which still holds private, but no longer in the strictest sense, secret meetings.

"Like most revolutions it is really the result of a long process of evolution.... The inner cabinet had long existed in a more or less unacknowledged form. Asquith regularised the inner cabinet and gave it definite status as the War Cabinet, and he made a step towards abolishing the secret conclave by providing his committee with a secretary."

### **Main Features of Cabinet System**

(1) There are many main features of the Cabinet system of England. The ministers are responsible to Parliament for whatever happens in their departments. They can be criticised, censured and out-voted by parliament. The Cabinet must enjoy the confidence of the House of Commons. If it loses the support of that House, it must either resign or ask for dissolution of the House of Commons. It can continue in power if it secures a majority in the new General Elections. It resigns if it fails to do so.

(2) The ministers are responsible individually for their own departments and collectively for the whole of the administration.

Even if one Minister is defeated or censured in the House of Commons, the whole Ministry must resign. That is the reason why all the ministers consult one another on all important matters and also help one another. The principle of collective responsibility was described by Lord Salisbury in these words in 1878: "For all that passes in the Cabinet, each member of it who does not resign is absolutely and irretrievably responsible and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues." According to Lord Morley, "As a general rule, every important place of departmental policy is taken to commit the entire Cabinet, and its members stand or fall together. The Chancellor of the Exchequer may be driven from office by a bad dispatch from the Foreign Office, and an excellent Home Secretary may suffer for the blunders of a stupid Minister of War. The Cabinet is a unit as regards the sovereign and a unit as regards the legislature. Its views are laid before the Sovereign and before Parliament, as if they were the views of one man. It gives its advice as a single whole, both in the royal closet, and in the hereditary or the representative chamber. The first mark of the Cabinet...is united and indivisible responsibility." Lord Melbourne is stated to have remarked thus to his colleagues: "It does not in the least matter what we say but we must all say the same."<sup>2</sup>

However, in 1932, the members of the coalition cabinet declared that they had agreed to differ over the issue of tariff although they were united on all other vital matters of national policy. The result was that certain Ministers were allowed to criticise in Parliament the views of the majority and also vote against the same. This state of affairs did not last long as those Ministers decided to resign on the issue of imperial preference.

In his speech on the Budget Lord Hailsham observed thus: "When a Government has to choose between a run on the pound and its own popularity, it has only one choice it can make. It makes it unwillingly. It must face unpopularity, loss of by-elections and even, if need be, defeat at a later general election. This is the price of responsible government."

(3) Another characteristic of the Cabinet system is the homogeneity of the party upon which the Cabinet is based. The spiritual condition of vigorous, frank, and independent creativeness which is productive of so much good, is that there should be only a small risk of disruption and self-seeking. This is provided by the political unanimity of the Cabinet. It is true that Coalition Cabinets have been formed to meet certain emergencies, but they have not been popular in England. Coalition Cabinets have broken up soon after the emergency is over.

(4) Another characteristic of the Cabinet system is secrecy. The secrecy of Cabinet proceedings is safeguarded by law and convention. The Official Secrets Act of 1920 forbids the communication to unauthorised persons of official documents and information with heavy penalties. In 1934, Edgar Lansbury, son of



George Lansbury, a former Labour Minister, was fined because he published in the biography a memorandum submitted to the Cabinet. However, when the National Government was formed in 1931, Labour ministers and ex-ministers competed with one another in telling the public as to what happened in the meetings of Cabinet on the issue of retrenchment. In 1922, Secretary of State for India had to resign on account of the leakage of some information regarding India.

(5) Another characteristic of the Cabinet system is the leadership of the Prime Minister. According to Lord Morley, "Although in Cabinet, all its ministers stand on an equal footing, speak with equal voice and on the rare occasions when a division is taken are counted on the fraternal principle of one man, one vote, yet the head of the Cabinet is Prime Minister who occupies a position which so long as it lasts, is one of exceptional and peculiar authority."

(6) Another characteristic of the Cabinet system is that the members of the Cabinet belong either to the House of Commons or to the House of Lords. If at the time of appointment, a minister does not belong to either of the two Houses, he must either be created a Peer or returned to the House of Commons from some constituency. What is actually done is that a member belonging to the party in power vacates his seat which is considered to be safe and a by-election takes place. It is pointed out that the presence of the ministers in Parliament is essential for many reasons. It ensures legislative and executive co-operation. According to Dr. Finer, "It often happens that to exclude your enemies is simply to create a rival in an unassailable position, whereas to command them into your continual presence is to have them under surveillance which does more than surprise their intrigues, for it irresistibly insinuates itself into their habits of thought and attends, spectre-like, even in their private councils."

(7) Another characteristic of the cabinet system is that the Sovereign does not attend its meeting. This practice dates from 1714 when George I became the King of England. As he did not know the English language, he stopped attending the meetings of the cabinet. Sir J. A. R. Marriott rightly points out that so long as the Sovereign sat at the Council-Board, some degree of political responsibility was bound to attach to him and the complete irresponsibility of the Sovereign is a condition precedent for the complete responsibility of the cabinet for the affairs of the State.

### **Ministerial Responsibility**

The principle of ministerial responsibility has a three-fold application. In the first place, the ministers are responsible to the King. Undoubtedly, it is merely a technical responsibility. The King of England does not possess the power to dismiss a minister in the same way as the President of the U.S.A. can do. The ministers in England remain in power so long as they enjoy the confidence of the House of Commons. If a minister is dismissed by the Government, even when he enjoys the confidence of the House

of Commons, the King is bound to create trouble for himself. It is possible that such an unwise act might create a demand for the abolition of monarchy itself. However, in spite of the impossibility of enforcing the responsibility to the King, the legal fiction of that responsibility remains.

Secondly, the ministers are responsible to one another. Every minister consults his colleagues before taking any action which can be the object of criticism. The defeat of one minister may bring about the fall of the whole Ministry.

In the third place, ministers are responsible to the House of Commons. This is the real meaning of ministerial responsibility. It is true that there is no legal obligation for a ministry to resign when it is defeated in the House of Commons, but such is the convention. It is to be noted that the responsibility is not to both Houses of Parliament but to the House of Commons alone.<sup>1</sup> The usefulness of ministerial responsibility can be stated thus: "There is no more valuable safeguard against maladministration, no more effective method bringing the searchlight of criticism to bear on the action or inaction of the executive Government and its subordinates."

The great power which the House of Commons has over the Government is that the Minister who makes the decision, has to come to the Dispatch Box and explain his reasons. He can then be questioned by members, praised, criticised or attacked. A motion of censure on his decision can be 'tabled' by the Opposition and, by convention, has to be debated as soon as possible. The Minister represents a large Department of many Civil Servants, who cannot be questioned about their conduct by Parliament on matters of policy, but the Minister can. He is responsible for all the acts of his Department, even if he had no knowledge of some of them. The people of a village want to have a post office but the officials at the ministry are opposed to it. The Member in whose constituency the village lies is asked to raise the matter in the House. He puts down a question and the Post Master General asks his officials for the details of the controversy. If they have made a serious mistake and have put the Minister in the wrong, he must take the responsibility. He can issue a severe reprimand to the officials privately. However, in the eyes of the House of Commons, he is the man responsible. Any attempt to shuffle off this responsibility on to his Civil Servants would infuriate the House of Commons. The Civil Servants who are incompetent or who place the Minister in an impossible position can be persuaded to resign or are removed to positions of less importance but it must be made absolutely clear that it is the Minister who is responsible to the House of Commons for the errors of his officials.

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1. In April 1965, the Burma Shell Bill which was passed by the House of Commons, was defeated by the House of Lords by 144 votes to 69. In spite of that, the Labour Ministry did not resign. This Bill was designed to deny full compensation to the Burma Oil Company for the British Army blowing up its oil installations in Burma during World War II in 1942 during the Japanese onslaught.



Ministerial responsibility means that for every act or neglect of his department, a Minister is responsible. No Minister can shield himself by blaming his official. "It would be new and dangerous constitutional doctrine if Ministers of the Crown could excuse the failure of their policies by turning upon the experts whose advice they have taken or upon the agents whom they have employed."

In 1934, a public inquiry was ordered by the Minister of Agriculture and Fisheries to inquire into the circumstances leading to the disposal of land which was not required for the purpose for which it had been acquired by the State. The inquiry disclosed that a number of civil servants were involved and there was a lot of public criticism. There was a debate in the House of Commons and the Home Secretary reaffirmed that a civil servant was wholly and directly responsible to his Minister and could be dismissed by him at any time. It is true that the power was seldom used but the power was nonetheless there. It was also declared on that occasion that a Minister must protect a civil servant who has carried out his order explicitly. Likewise, a Minister must defend a civil servant who acts properly in accordance with the policy laid down by the Minister. "Where an official makes a mistake or causes some delay, but not on an important issue of policy and not where a claim to individual rights is seriously involved the minister acknowledges the mistake and he accepts the responsibility although he is not personally involved. He states that he will take corrective action in the Department." Where action has been taken by a civil servant of which the Minister disapproves and has no previous knowledge and the conduct of the official is reprehensible, there is no obligation on a Minister to endorse what he believes to be wrong or to defend what are clearly shown to be errors of his officers. However, the Minister remains constitutionally responsible to Parliament for the fact that something has gone wrong.

On the occasion of two World Wars, War Cabinets consisting of 5 to 9 senior ministers were set up. The other Ministers were not in the Cabinet. The question arises whether the other Ministers were responsible for the decisions of the War Cabinet or not. One view is that only the members of the War Cabinet were collectively responsible, together with those Ministers who were called in for consultation for a particular decision. The other view is that the Ministers who were not members of the War Cabinet had delegated for the time being the power to take decision to their colleagues in the War Cabinet and thereby they had pledged themselves to stand or fall by what the Cabinet decided although they had no right or opportunity of putting forward their point of view before the War Cabinet. It is pointed out that a government has to take quick decision in times of war. The various ministers may be at different places and it may not be possible to bring them together for consultation and decision. Unity is secured by the urgency of the matter and political differences are suppressed for the time being.

Even when the war was over in 1945, there were 35 ministers. 19 of them were in Cabinet and 16 were out of it. It cannot be said that the 16 ministers outside the cabinet agreed to delegate their authority to their colleagues in the cabinet. However, they are bound by the decisions of the cabinet and they cannot criticise or oppose them in public. These ministers share the consequences of collective responsibility although their actual responsibility is not the same. While their role is negative, that of the members of the cabinet is positive.

### Importance of the Cabinet

According to Gladstone, "The Cabinet is the three-fold hinge that connects together for action in the British Constitution the King or Queen, Lords and Commons.....Like a stout buffer-spring, it receives all shocks, and within it their opposing elements neutralize one another. It is perhaps the most curious formation in the political world of modern times, not for its dignity, but for its subtlety, its elasticity, its many-sided diversity of power.... It lives and acts simply by understanding, without a single line of written law of constitution to determine its relations to the Monarch, or to Parliament, or to the nation, or the relations of its members to one another, or to their head." According to Prof. Dicey, "While every act of state is done in the name of the Crown the real executive Government of England is the cabinet. None really supposes that there is not a sphere, though vaguely defined sphere, in which the personal will of the Queen has under Constitution very considerable influence."

According to Bagehot, the Cabinet is a "hyphen that joins, the buckle that binds the executive and the legislative departments together." According to Lowell, "The Cabinet is the keystone of the political arch." Sir John Marriott refers to it as "the pivot around which the whole political machinery revolves." Prof. Ramsay Muir describes it as "the Steering Wheel of the ship of State." It is true that Gladstone described the House of Commons as "the solar orb around which the other bodies revolve," and Sydney and Beatrice Webb contend that "the Government of Great Britain is in fact carried not by the Cabinet nor even by the individual Ministers but by the Civil Services, but the fact remains that the English Cabinet is all important in the country." No wonder, L. S. Amery describes the Cabinet as "the Central directing instrument of Government."

### Functions of the Cabinet

The English Cabinet performs innumerable functions. It is the Cabinet that formulates the policy to be followed by the Government. Once the policy has been decided upon, bills are drafted to execute the same. Invariably, some member of the Cabinet is in charge of the bill in Parliament. As the Cabinet enjoys the confidence of the House of Commons, every bill introduced by it is bound to be passed. The result is that the Cabinet is in a position to carry out what it actually decides. Once the legislation



has been passed, the Cabinet can see to it that the various departments enforce the laws in the same spirit in which they have been passed. The system is different in the U.S.A. The President of America may like to follow a particular policy but he may fail to carry out the same because Congress may refuse to pass laws which alone could enable the President to enforce the policy. The Cabinet system in England brings about a collaboration between the executive and the legislature and thereby ensures the smooth working of the Government. The Cabinet is always sure of getting the desired legislation passed through Parliament.

The Cabinet decides the foreign policy of the country. It decides all questions of war and peace. It negotiates treaties with foreign countries. It decides when Parliament is to meet and when it is to be dissolved. The Cabinet prepares the time-table of Parliament and has practically a monopoly of its time.

The Report on the machinery of the Government Committee of 1918 enumerated the following main functions of the Cabinet:—

1. The final determination of the policy to be submitted to Parliament.
2. The supreme control of the National Executive in accordance with policy prescribed by Parliament.
3. The continuous co-ordination and delimitation of the authorities of several departments of the State.

According to Lord Oxford and Asquith, the following matters are usually not discussed in the Cabinet:—

1. The exercise of the prerogative of mercy.
2. The personnel of the Cabinet.
3. The making of appointments.

### **Dictatorship of the Cabinet**

If during the 19th century, students of Political Science referred to the sovereignty of Parliament, in the 20th century we talk of the dictatorship of the Cabinet. Many factors have contributed towards the strengthening of the hands of the Cabinet. The position of the British Cabinet has become so strong that we refer to it as the dictatorship of the Cabinet. To quote Ramsay Muir, "A body which wields such powers as these may fairly be described as omnipotent in theory, however incapable it may be in using its omnipotence. Its position whenever it commands a majority, is a dictatorship until qualified by publicity. This dictatorship is far more absolute than it was two generations ago."

(1) The growing rigidity of party system has strengthened the hands of the Cabinet. During the 19th century, the Members of Parliament were not so much under the control of party whips as they are today. The conscience of a member does not matter. He must do what the party decides. If he refuses to obey the party whip, he is liable to be expelled from the party. The party system

has become such a normal feature of the political system of England that it cannot be worked without it. The electors refuse to vote for a person who does not belong to any party. The result is that if a person refuses to obey the mandate of his party, he is certain to commit political suicide. There is bound to be an end of political career. (Under the circumstances, a member of Parliament would prefer to act according to the orders of his party than assert himself and face the consequences. The result of all this is that the Cabinet is always sure of getting the support of its party in parliament and consequently is encouraged to do whatever it pleases.)

On the rigidity of the party system in England Prof. Laski remarks thus: "This rigidity is, of course, reflected in the House of Commons itself." It has meant that debates and divisions are in all normal cases stereotyped; we do not expect any wide liberty of speech or vote from the private member. Such elaborate cross-currents of opinion as were displayed, for example, on Lord Shaftesbury's Factory Bill of 1844, or in the Don Pacifico debate of 1850, on Palmerston's foreign policy, have now become impossible, they occur only on those rare, and usually minor occasions when the Government permits a free vote in the House. The rigidity, of course, means an increasing control of the House of Commons by the Cabinet; and the secret of that control lies in the fact that the leaders of the Government and the Opposition alike are in control of the activities of their members through the domination of the party machine. The day of the independent members has gone; and there is no prospect that it is likely to be revived.

"The causes of this increased rigidity are not simple. Partly, of course, it is due to the fact that the vast electorate of modern Britain requires a far more elaborate party organisation; this, naturally enough has accreted power to itself. Partly, also, the great increase in the area of State intervention has meant a great increase in Government business in Parliament; a more rigid party structure is necessary if that business is to be completed within the necessary limits of time. Partly, too, perhaps, it is possible that electorates of the modern size tend to accrete about principles in terms of personalities, they return their members less for their own sake than for the leaders they are to follow. The whole system of party has become necessarily professionalized; and the very width of its tasks has driven it to a discipline not unlike that of an army. There may be protests against its intensity; there may be 'caves' and even revolts. But most members of a party recognize that a break with it is not only a danger to themselves; it also increases vastly the chance that their opponents will be successful, if the break is of serious proportions. Any considerable rebellion in a party is, therefore, an occurrence unlikely save in the gravest circumstances; even in 1931, only sixteen members of the Labour Party crossed the House with Mr. Ramsay MacDonald." (*Parliamentary Government in England*, pp. 73-74.)

(2) Another cause of Cabinet dictatorship is the collective responsibility of the ministers. Every minister in England knows



that the defeat of one minister will involve the resignation of the whole ministry. The result is that all the ministers work as a team and help one another on all occasions. Unity is strength and no wonder the collective responsibility of ministers makes the position very strong. The lack of such a thing in France has been partly responsible for the instability of the ministries in that country.

(3) The growth of delegated legislation has also been partly responsible for the dictatorship of the Cabinet. Whatever the merits of such a system, it has become an absolute necessity under the existing circumstances. Law has become highly technical and it is beyond the competence of the ordinary member of the Parliament to understand all its implications. Moreover, there is a lot of rush of work in Parliament. A large number of laws have to be passed by Parliament in every session. That is partly due to the fact that the conception of the State has changed. Formerly, it was contended that the State is an evil and consequently the sphere of the State should be reduced to the minimum. Such a view does not hold the field today. We believe in these days in the positive conception of the State. We stand for a welfare State and not a police State. The result is that the sphere of the activities of the State has considerably widened. This necessitates the passing of a large number of laws to raise the ideal of a welfare State. Moreover, the size of every bill has enormously increased. Formerly, the bill used to be very small but now every bill has become very big. All these factors have added to the volume of work to be transacted by Parliament. As the time is very short, State. Moreover, the size of every bill has enormously increased. ed in Parliament and passed. The ministers concerned are given the power to issue Orders-in-Council to supplement the law from time to time according to their needs. This means that the members of the Cabinet are to have the power of making laws also. As the number of Orders-in-Council issued every year is very large, the control of the Cabinet in the field of legislation also became very great. Thus, the Cabinet comes to have control not only over administration but also in the legislative field.

(4) The growth of administrative justice has also added to the powers of the Cabinet. There is a tendency on the part of the Government to give the various ministries the power to decide cases concerning their departments. Formerly, those cases were decided by the ordinary Courts of law. The result of the change is that the executive has come to possess a very large number of judicial powers also. This has undoubtedly added to the prestige and strength of the Cabinet. Under the Road Traffic Act of 1913, the Minister of Transport has the authority to hear appeals from refusal of licences to running of omnibuses. Likewise, the Minister of Health is a tribunal of appeal under the Old Age Pension Act, 1936. In the case of Local Government Board *versus* Arlidge (1915), the House of Lords laid down that an administrative tribunal need not follow that procedure which enables the specific administrative authority to act efficiently. In the absence of any provision, the



minister or the tribunal is not bound to give any reason for its decision. However, it is bound to follow the rules of natural justice.

(5) Another factor that has added to the strength of the British Cabinet is the power of dissolution. (A convention in England demands that when a ministry is out-voted, it need not resign at once. When such a situation arises, the Prime Minister has the right to ask the King to dissolve the House of Commons. When so requested, the King must dissolve the House. If the ministry secures majority in the new elections, it is entitled to continue in power. The result of this convention is that the British Cabinet is not as helpless as the French Cabinet was under the third Republic. If the members of the House of Commons have the freedom to pass a vote of no-confidence against the ministry, the latter has also the power to send the members home by getting the House of Commons dissolved. The result is that the Members of Parliament do not decide to pass a vote of no-confidence against the party in power light-heartedly. They know the consequences of such an action. Many may not be re-elected at the time of the new election. All of them have to spend a lot of money and put up with a lot of inconvenience in order to get themselves re-elected. The result is that the power of dissolution acts as a great deterrent on the Opposition and that strengthens the hands of the Cabinet.)

Dr. Finer has made the following observations on the power of the threat of dissolution: "Some of the spontaneous and valid creativeness of the House of Commons is dissipated by the threat of the Cabinet to dissolve if it is overcome upon a matter it deems vital. Now this point has been falsely overstressed. It has been phrased as though the Cabinet were in the habit of letting the House know that it will definitely dissolve upon such and such provocation, as though members were coerced only by the thought of their election expenses. This is not so. The operation is much more subtle, and sometimes unintentional. It operates thus: When the Cabinet let it be known that a matter is vital, by sending out strong whips, not only its own recalcitrants are compelled to take thought, but the formal opposition must seriously consider whether the issue is really big enough for an electoral contest and whether they are likely to be able to take over the Government. If, on the whole, the political position is not quite in their favour they are likely to yield ground, wholly or in part. In short, each issue is determined not by the objective goodness or badness of the policy, but by whether the Opposition can successfully carry the matter in the country, and this depends on (a) the nature of the issue itself, (b) the general state of political opinion in the country, and (c) the condition of the finances and organization of the party for the coming fray. But these matters hardly arise where the Opposition is in a minority (which in the last two generations has been almost always) or unless the government party is likely to split (which is very rarely). Hence the Opposition cannot do more than obtain that effect upon government policy, with its debating talent, the reasonableness of its argument, and the calculation of favour-



able electoral chances, conspire to give." (*The Theory and Practice of Modern Government*, p. 620.)

(6) The conditions of parliamentary life are not calculated to enable the House of Commons to control the Cabinet effectively. Lord Rosebery pointed out that the theoretical accountability of the Cabinet is normally and regularly in abeyance for half the year. To quote him, "During the whole of the parliamentary recess, we have not the slightest idea of what our rulers are doing or planning, or negotiating except in so far as light is afforded by the independent investigations of the press." It is difficult for a body of men who pay fitful attention to public affairs to supervise other men who have in their hands the conduct of these affairs of the time. According to Sidney Low, "The members of the House of Commons are occupied in various ways; they have many things to interest them during the short London session, and though they may have every desire to do their political work properly, the circumstances are much against them. Half the House is taken up with business and the other half with amusement. As the session goes on and the weather grows warmer, and London society plunges into its summer rush of brief excitement, many members find it difficult to devote their energies steadily to their parliamentary duties." It is true that the parliamentary system tends to make the Cabinet autocratic but according to Lowell, it is "*an autocracy exerted with the utmost publicity, under a constant fire of criticism, and tempered by the force of public opinion, the risk of a want of confidence and the prospects of the next election.*"

Critics point out that it is going too far to say that a government in the possession of a majority forms a temporary dictatorship. The authority of the Government is derived from the confidence of the majority and that majority rests upon popular support. If the cabinet shows too much of secrecy, grave discourtesy or makes a continuous threat of resignation or dissolution or shows inability to quell an angry public opinion outside, there is every possibility of its supporters revolting against it. The Prime Minister has to say with Carlyle that "*I am their leader, therefore, I must follow them.*" It is the duty of the Prime Minister and his colleagues to find out in which direction the minds of their supporters are working and they must act according to their wishes. Even if it involves a change of official policy, it must be done. Otherwise, the consequences are serious. In 1931, the Labour Party had 288 members in the House of Commons, the Conservative Party 260 and the Liberal Party 59. Ramsay MacDonald, as the Leader of the Labour Party, was the Prime Minister of England. Snowden and Thomas, two important members of his cabinet, proposed a cut in unemployment benefit but their proposals were rejected by the trade union authorities. The result was that a section of the cabinet, led by Mr. Henderson, revolted against the authority of Ramsay MacDonald. There was a split in the Labour Party and Ramsay MacDonald had to resign. In 1934, the National Government headed by Ramsay MacDonald



had an unprecedented majority in the House of Commons and in spite of that it had to give way on the issue of the Unemployment Assistance Regulations. Likewise, the Government had to accept substantial amendments in its Incitement to Disaffection Bill because the Opposition within the House of Commons made common cause with the opposition in the general public. In December, 1935, Sir Samuel Hoare was the Foreign Secretary of England. He made a deal with Laval, the Prime Minister of France, on the question of Abyssinia. The information leaked out and was published in the newspapers of Paris and London. There was an immediate and spontaneous outcry against the proposal. The British Cabinet was forced to repudiate the action of Sir Samuel Hoare and the latter was made to resign. While resigning, Sir Samuel Hoare made the following statement: "I have not got the confidence of the great body of opinion in the country and I feel that it is essential for the Foreign Secretary, more than any other minister in the country, to have behind him the general approval of his fellow countrymen." In 1937, Chamberlain had to give way on the question of National Defence Contribution Scheme. According to Dr. Finer, "On the whole, the British cabinet offers quick, vigorous, thoughtful and responsible leadership. It is controlled, but not stultified; threatened but not executed; questioned but not mistrusted; politically partisan but not personally malicious, restrained as much by the spirit of responsible power as by its institutions and sanctions; and, Janus-like it looks at once to the People and the Senate."

### Prime Minister of England

The office of Prime Minister came into existence in the time of the Hanoverians by means of a convention and Walpole was the first Prime Minister as stated earlier. Formerly, there was no salary of the Prime Minister as such. He drew his salary as the incumbent of another office. However, the Ministers of the Crown Act of 1937 provided for a salary of £10,000 a year for the Prime Minister. Provision has also been made for the payment of a pension to ex-Prime Ministers. The object is to see that having held the office of a Prime Minister, that person continues to take interest in the politics of the country and does not suffer from any financial difficulties.

According to a convention, when the general elections are over, it is the duty of the King of England to call the leader of the majority party to form the ministry. The work is ordinarily not difficult because there are essentially two parties in England and consequently one of the two parties is in a majority. The difficulty can arise only when there are three or more parties. Things as they are in England the King has no discretion on this matter. He had to call the leader of the majority party in the House of Commons to form the ministry. His likes or dislikes do not matter. Although Queen Victoria did not like Gladstone, she had to invite him to form the ministry four times.

Formerly, a Prime Minister could be selected from the House



of Commons or from the House of Lords. During the 19th century many Prime Ministers were taken from the House of Lords—Lord Palmerston, Lord Salisbury, etc. However, a new convention requires that the Prime Minister must belong to the House of Commons. (It is on account of this fact that Lord Curzon was not invited to form the ministry in 1923.) It is pointed out that under the new set-up when all powers have come into the hands of the House of Commons, the Prime Minister must belong to a House which is the House of the people, and that undoubtedly is the House of Commons.

Experience has showed that those persons who ultimately become Prime Ministers join Parliament very young. They have to put in many years as members of Parliament before they become Prime Ministers. The average age to become a Prime Minister is about 50, although there have been some exceptions. Generally Prime Ministers are men of means and consequently they have not to worry about their livelihood. According to Munro, "The typical premier of Britain has been, therefore, well-born, a well-educated, well-to-do man, who entered politics earlier and made it his profession." When asked what qualities are required in a Prime Minister the Younger Pitt replied, "Eloquence first, then knowledge, thirdly toil and lastly patience."

According to Dr. Jennings, "The Prime Minister has thus to be not only a close student of public opinion but also an expert in propaganda. He must know what to say, when to say it, and when not to say anything. He must give close attention to newspapers while realising that the views of journalists or their proprietors, though having some influence on public opinion, probably give a false impression of it. He must also study the reports which the party managers receive from the constituencies and the views which his supporters in Parliament express in the lobbies, realising that the views of committee men and others who collect the votes are not necessarily the views of the voters themselves. Since his personality and prestige play a considerable part in moulding public opinion, he ought to have something of the popular appeal of a film actor and he must take some care over his make-up—like Mr. Baldwin with his pipes, and Mr. Churchill with his cigars. Unlike a film actor, however, he ought to be a good inventor of speeches as well as a good orator. Even more important, perhaps, is his microphone manner, for few attend meetings but millions listen to broadcasts. Finally, it is essential that he should be able to retain the loyalties of his political friends; and it helps considerably if he remembers their names, asks the right questions about their families, realises when sympathy or congratulation is required, and generally is a good mixer with exactly the right measure of consideration." (*Cabinet Government*, pp. 160-1.)

The Prime Minister has a free hand in the making of his Cabinet. He can include anybody he pleases in his Cabinet and the King cannot interfere with it. However, there are certain factors which every Prime Minister has to take into consideration

at the time of selecting his colleagues. He has to make his Cabinet as broadly representative as possible. He cannot ignore sectional, social, religious, economic and personal considerations. He cannot choose only Englishmen or Scotchmen or Welshmen. The claims of the various parts of the country have to be taken into consideration. There are some very important members of his party and the Prime Minister simply cannot ignore them. Their inclusion in the Cabinet is bound to add to the strength of the Cabinet. It is true that it may be inconvenient for a Prime Minister to control them, but they are likely to do less mischief when inside the Cabinet than if they are excluded from it.

Ordinarily, the Prime Minister can distribute the portfolios among the various ministers and while doing so he keeps in view the efficiency of administration. However, sometimes his hands are tied and he has to appoint a particular person to a particular office. It is stated that Ramsay MacDonald wanted to keep to himself the portfolio of Foreign Affairs but as Henderson, a prominent member of his party, insisted on having that portfolio, MacDonald had to submit to his wishes and appointed him accordingly. However, this is not always the case. While as the captain of the team it is the duty of the Prime Minister to take into consideration the aptitudes of the various persons when distributing the various departments, his colleagues must respect his wishes also.

Formerly, a Prime Minister could take over another department in addition to his work as Prime Minister. However, it appears that that is not going to be the case in future. The reason is that the duties of a Prime Minister have multiplied. As the co-ordinator of the work of the various departments of the Government he has a lot to do and consequently he will not be able to spare either the time or the energy to attend to any single department.

The Prime Minister of England is a very busy man. He is responsible for running the whole show. He has to see that the whole of the ministry works smoothly. He has to make himself available to every minister, who may be confronted with any difficulty. It is his duty to iron out the differences between the various ministers. He has to go to the rescue of every minister who finds himself in difficulty in Parliament. He may have to satisfy Parliament in respect of any department. In conjunction with his colleagues, he formulates the policy of the Government and sees to it that it is carried out in the same spirit.

The Prime Minister is not in charge of Foreign Affairs, but in spite of that he exercises a lot of influence on the same. All authoritative pronouncements on the foreign policy of the country are made by the Prime Minister and not by the Foreign Minister. The Foreign Minister usually consults the Prime Minister before taking any action. It is possible that the action may be taken by the Foreign Minister with the consent of the Prime Minister without its being brought before the Cabinet. The telegram by which Sir Edward Grey refused to bind Great Britain to neutrality on 30th July, 1914, was sent with the sanction of Asquith but it was not submit-



ted beforehand to the Cabinet. The ultimatum to Germany in 1914 was not sent with the prior approval of the Cabinet although with the consent of the Prime Minister. According to Dr. Jennings, the Foreign Secretary is usually in close touch with the Prime Minister. It is impracticable to bring every item before the Cabinet. Gladstone wrote to Sir William Harcourt in 1894 thus: "I was made habitually privy in the time of Clarendon and Granville to the ideas as well as the business of the Foreign Minister and in consequence the business of the department, if and when introduced to the Cabinet, came before it with a joint support as a general rule." It is stated that Lord Rosebery was "in almost daily communication with the Prime Minister, often by notes, oftener still by stepping across Downing Street to secure five minutes of advice."

The function of the Prime Minister is primarily one of giving advice when asked. Plans are discussed with him long before they are actually brought before the Cabinet. According to Sir Edward Grey, "They are two persons with whom a minister ought to be able to toss his thoughts and policy. One is his Chief Private Secretary and the other is the Prime Minister."

The Prime Minister not only appoints but also dismisses the ministers. He exercises a lot of patronage. He has a right to be consulted when important appointments are made by the ministers. He is constantly consulted by ministers on the major problems of the departments. He summons and presides over the meetings of the ministers which decide common action of the departments. He sets up bodies like the Committee of Imperial Defence and the Economic Advisory Council which result in the common action of departments. He presides over the Defence Committee which prepares plans for the co-ordination of departmental activities in times of war. He controls the Cabinet Secretariat and is consulted by the ministers regarding the matters to be brought before the Cabinet. He has to see that the decisions of the Cabinet are carried out by the various departments. In times of emergency he can authorise the department to take action on those matters which ought to have been previously decided by the Cabinet.

The Prime Minister is the channel of communication between the King and the Cabinet. Sometimes ministers communicate with the King on matters affecting their departments. The Prime Minister of England is in direct communication with the Prime Ministers of the Dominions and presides over their meetings. He sometimes receives foreign ambassadors and also represents the British Government at international conferences. He receives deputations on matters of general political importance.

The Prime Minister is the leader of the House of Commons. He prepares the time-table of the House. He decides when Parliament is to meet and how long it is to meet. He prepares its agenda. He decides how much time is to be devoted to Government business and how much time is to be allotted to private members. He decides when Parliament is to meet in secret session. He is the leader of his own parliamentary party and has to maintain contacts with the



supporters in Parliament. He is in charge of the central party machine and as such takes a prominent part in political propaganda.

According to Dr. Finer, pre-eminence of the Prime Minister is shown in securing the chairmanship of the Cabinet; the leadership of Parliament, his position as chief channel of communication with the Crown on general policy and his acknowledged position in the country as leader of the party and embodiment of the highest political power. According to the same writer, the Prime Minister "is not Caesar; he is not an unchallengeable oracle; his views are not dooms; he is always on sufferance and its terms are whether he can render indubitably useful services. At any time a rival may supplant him." (*The Theory and Practice of Modern Government*, p. 581.)

According to Lord Rosebery, "The Prime Minister who is the senior partner in every department as well as president of the whole, who aspires and vibrates through every part, is almost, if not quite, an important figure. The Prime Minister is the spokesman of that Board of Directors which is called the Cabinet, who is the initiator and guidance of large course of public policy; but who does not, unless specifically invoked, interferes departmentally." According to Lord Oxford and Asquith, "No Prime Minister could find time or energy for such a departmental autocracy as Peel appears to have exercised. Lord Palmerston's authority in his Cabinet (He was to the last one of the most industrious of men) was maintained by widely different factualities and methods."

According to Dr. Jennings, the Prime Minister "is not merely *primus inter pares*. He is not even, as Harcourt said, *inter stellas luna mioners*. He is rather the sun around which planets revolve. Though he may rise to office because of the King's choice or election of his parliamentary colleagues, he owes his majority to the choice of the electors. Generally, a party obtains office because of a general election. A general election is, primarily, an election of a Prime Minister. The wavering voters who decide election, support neither a party nor a policy, they support a leader." (*Cabinet Government*, pp. 183-84.) Again, "The Prime Minister holds the key position in the British Constitution, and nearly all recent developments have tended to increase his authority. The extension of the franchise, added to the prestige which Gladstone and Disraeli conferred upon the office, have given him a status almost comparable with that of the President of the United States. A general election is in reality the election of the Prime Minister. The elector has a choice between Gladstone and Disraeli, Salisbury and Rosebury, Balfour and Campbell-Bannerman, Asquith and Balfour, Lloyd George and Asquith, Baldwin and MacDonald, MacDonald and Henderson, Churchill and Attlee." (*The British Constitution*, p. 162.)

While referring to the election of 1857, Gladstone observed: "It is not an election like that of 1784 when Pitt appealed on the question whether the Crown should be slave of an oligarchic faction, nor like that of 1831 when Grey sought a judgment on reform nor like



that of 1852 when the issue was the expiring controversy of protection. *The country was to decide not upon the Canton River but whether it would or it would not have Palmerston for Prime Minister.*" In the famous Midlothian Campaign of 1880, Gladstone carried on a relentless criticism of the administration of Lord Beaconsfield. The alternative put before the voters was whether they were to be governed by Gladstone or by Lord Beaconsfield. It was the personal triumph of Gladstone in 1880 that he became the Prime Minister of England. In 1945, Churchill made a personal appeal to the voters to re-elect him and the Conservative Party hoped to "cash in" on account of the personal popularity of Churchill. The slogan of the Conservatives in favour of Churchill was: "Help him finish the job." They referred to the candidates of the Labour Party in these words: "Vote for the Bloggs." The Conservative Party did not issue any election manifesto. However, Churchill issued a manifesto of his own which began with the word "I". The candidates of the Conservative Party styled themselves as "*Churchill candidates*". The newspapers put the alternative before the public in these words: "Churchill or chaos" or "Churchill and Laski" Mr Harold Laski being the current bogymen.

It is necessary for every Prime Minister to establish effective mastery over the House of Commons and every Prime Minister has developed his own technique for doing so. Mr. MacMillan gives the impression of personal confidence combined with a zealous attempt to persuade the Opposition, as reasonable men, of the wisdom of his policy. He treats the Opposition frankly and politely. The impression is conveyed that if the Opposition had been in his place, they would have acted precisely as he did. The Prime Minister is quick and resourceful in debate. He is often witty and at times playful and is not engaging in the particular brand of humour enjoyed in Parliament.

Prof. Laski has made the following observations on the position of the Prime Minister of England:—"The Prime Minister is the pivot of the whole system of government. Normally, he is not only the leader of the majority party and the head of what Bagehot termed the 'efficient' party of the executive. He settles differences between departments. He can, with the assent of the Sovereign, call for the resignation of any of his colleagues. He has a decisive voice in all important Crown appointments. He has to keep a general eye on all departments, in particular that of Foreign Affairs, and to act as the co-ordinator of policy. He is the Leader of the House of Commons, and members there, especially in times of difficulty, will look to him as the reserve power to whom appeal beyond ordinary ministers may be made. He is, further, the effective channel of communication between the Cabinet and the Sovereign; and the Letters of Queen Victoria bear witness that this function is no sinecure if the monarch is a person who takes his duties seriously.

"Obviously, indeed, the office of Prime Minister varies enormously with the character of the man who holds it. Few colleagues ever challenged the authority of Gladstone; Lord Salisbury, on

the testimony of Sir Michael Hicks Beach, was not good at controlling his colleagues; and Lord Rosebery seems to have been unable to control them at all. His own ability, the range of its interests, his skill as chairman, his capacity for rapid work, his power to distinguish between the significant and the insignificant, will all make a great difference. Disraeli is said to have been able to make his own views prevail even when all his colleagues but one were opposed to him. Peel was able—perhaps because the range of administration was so much narrower in his day—to keep an eye on the work of all the departments; but Mr. Asquith declined even to make this attempt on the ground that it was completely impracticable. It is said indeed, that during the war he was so little interested in Cabinet-discussions that he was accustomed to write letters during their progress; and to assume that, as they died down, agreement had been reached and that next question could be considered.

“It is certain that the modern Prime Minister can, for the most part, hope to do no more than control the large outlines of policy. That does not mean that his authority is less than before. For, in modern democracy, the issues of elections tend to accrete about a person; and there is a real sense in which a general election is nothing so much as a plebiscite between alternative Prime Ministers. The result is to give him a national standing which no colleague can rival so long as he remains Prime Minister. The party is built around his personality, and, so long as he retains the hold of his party, no one can really rival his standing. After all he appoints and dismisses his colleagues. It is to him that ministers go, in the first place, with their difficulties. He has a large share in making foreign policy. He settles differences between departments, and if their dispute becomes a Cabinet question, his voice in the settlement will carry special weight. He is the Chairman of the Committee of Imperial Defence. He controls the agenda of the Cabinet. He has a special significance in the context of both the Dominions and the League of Nations. His word in the House of Commons is law. Revolt against him, in the light of all this, is obviously difficult unless he had handled his job so badly that there is a widespread feeling of his unfitness for it.” (*Parliamentary Government in England*, pp. 239-41.)

According to Lord Home, “Every Cabinet Minister is in a sense the Prime Minister’s agent—his assistant. There’s no question about that. It is the Prime Minister’s Cabinet, and he is the one person directly responsible to the Queen for what the Cabinet does.

“If the Cabinet discusses anything, it is the Prime Minister who decides what the collective view of the Cabinet is. A Minister’s job is to save the Prime Minister all the work he can. But no Minister could make a really important move without consulting the Prime Minister, and if the Prime Minister wants to take a certain step the Cabinet Minister concerned would either have to agree, argue it out in Cabinet, or resign.”



According to J. B. Mackintosh, "...a successful, strong and opinionated Prime Minister can put his impress on a whole government.... The Cabinet falls into place as a forum for informing his colleagues of decisions that have been taken. In these circumstances it is very hard for a Minister who begins to have doubts to intervene with effect. He has insufficient knowledge, he is always too late, and is contending with the Prime Minister and the men whom the latter has elevated to a position of trust. And when decisions have been taken, there is little that can be done, except protest in the secrecy of the Cabinet, or resign."

### SUGGESTED READINGS

- |                          |  |
|--------------------------|--|
| <i>Cartier, B. E.</i>    | : The Office of Prime Minister.        |
| <i>Derry, K.</i>         | : British Institutions of Today, 1943. |
| <i>Gibbs, N. M.</i>      | : The British Cabinet System, 1952.    |
| <i>Jennings, W. I.</i>   | : Cabinet Government.                  |
| <i>Laski, H. J.</i>      | : Parliamentary Government in England. |
| <i>Mackintosh, J. B.</i> | : The British Cabinet (1962).          |
| <i>Morrison, Lord</i>    | : British Parliamentary Democracy.     |

## CHAPTER 4

### THE CIVIL SERVICE

#### Government by Amateurs

Before discussing the Civil Service of England, it is desirable to refer to the government of the country by amateurs.

A curious thing that strikes every student of British administration is that while the ministers in charge of the various departments are amateurs, the persons working under them are experts. While the former lay down the policy, it is the duty of the latter to carry it out. According to Prof. Munro, "The British War Office has been headed at times by a philosopher or a journalist, the Admiralty by a merchant or a barrister and the Board of Trade by a university professor." Again, "youth must pass an examination in arithmetic before he can hold a second-class clerkship in the Treasury; but a Chancellor of the Exchequer may be a middle-aged man of the world who has forgotten what little he ever learnt about the figures at Eton or Oxford and is innocently anxious to know the meaning of 'those little dots' when first confronted with treasury accounts worked out in decimals." (Sir Sidney Low). "A young officer will be refused his promotion to captain's rank if he could not show some acquaintance with tactics from military history, but the Minister of War may be a man of peace—we have had such—who regards all soldiering with dislike and has abstained from getting to know anything about it."

(1) There are certain distinct advantages of having an amateur as a minister and experts as his subordinates and that is the reason why the practical sense of the Englishmen has adopted such a system. It is pointed out that the machinery of the Government would not have worked smoothly if both the ministers and their subordinates had been experts. The reason is obvious. "When an expert supervises the work of experts, there is likely to be friction and disagreement, for it is the habit of experts to disagree." There cannot be any efficiency of work if the head and the subordinates do not pull together. The pulling of the two parts in opposite directions is bound to result in inefficiency and that has to be avoided at all costs. Experience shows that the work of the Government is done smoothly when the Minister himself is not an expert in his Department but is assisted by those who have spent a large number of years in the department and know practically everything about it. The result is that his subordinates put all the facts and figures before the minister and leave the latter to arrive at his own conclusion. This is as it should be. It is the minister who is responsible to the country for the administration of his department and consequently he alone should be given the freedom to arrive at his own conclusion. However, if he is supplied with all the information on the point, he is likely to arrive at right conclusion.



It is rightly pointed out that ministers are the incarnation of responsibility and no wonder the experts working under him occupy a subordinate position.

(2) An expert is one who knows more and more of less and less. While he is an expert in one branch of knowledge, he may be knowing practically nothing about any other branch of knowledge. An expert develops a narrow outlook. That is not a desirable thing for a minister. A minister is concerned not only with his own department but he has to take into consideration the needs of other departments also. He cannot chalk out a policy in complete disregard of the views and needs of other departments. A minister cannot forget that the defeat of another minister may bring about his own fall on account of the collective responsibility of ministers. An expert may not take a broad view of the whole problem and consequently the overall interests of the whole administration may suffer.

(3) It is also pointed out that no minister can afford to be an expert. Even if a university professor of political science is to be in charge of the Department of Education, he cannot be expected to do his job as an expert. As a Minister of Education, he is concerned not only with the study of history in the university, but also of other subjects. Moreover, the university education is not the only problem he has to tackle. He has also to deal with the education of students in the schools and colleges. He has not only to look to their academic studies but also to their physical developments. He has to keep in mind the education of women. He has to deal with technical and commercial education. The result is that even if an expert is taken to be the head of a department, he cannot be an expert in every branch of his department because the scope of every department has considerably widened.

(4) A minister is not the permanent head of department. He comes to office when his party secures a majority in the Commons. He remains in office so long as his party retains that position. He has to resign when his party loses the support of the House of Commons. The result is that the tenure of office of the minister depends upon the strength of his party in the House of Commons and he can be asked to go at any time. As a minister is not sure of his tenure, he cannot be expected to spend all his time and energy to master the details of his department. He may be asked to get out before he has acquired some acquaintance with the department.

(5) Even when the party to which a minister belongs is in power, the minister is not sure of his tenure. There may be a reshuffle of the Cabinet and his name may be omitted altogether. Even if that is not done, he may be transferred from one department to another. Such things have happened in the past and are likely to happen in the future. Sir Samuel Hoare was the Secretary of State for India. He also held the office of Home Secretary and Foreign Affairs. Sir John Simon acted as Foreign Minister, Chancellor of the Exchequer and Lord Chancellor. Examples can be multiplied to illustrate this point. However, the fact re-

mains that no minister can afford to be an expert as he is not sure how long he has to work in any particular department.

(6) There is another factor which stands in the way of a minister becoming an expert. A minister has to perform multifarious duties. He has not only to look after his department, but in addition to that he is expected to do a good deal more. He is expected to be in the House when Parliament is sitting. He is required to answer questions and supplementary questions that may be put to him. He has to be there to defend the actions of his department. This he can do if he is a good parliamentarian. He is expected to possess a ready wit. All this he cannot do if he is merely an expert as experts are usually shy and unfit for public life. A minister cannot afford to forget his constituency. He knows that his political career depends upon the support of his constituency. He has to take special pains to win and maintain the confidence of his constituency. He is not only expected to see those persons who might come from his constituency to see him, but also to visit his constituency in person and thereby maintain the confidence of his supporters. This requires a lot of time and consequently unfits him to be an expert in his department.

It is pointed out that the English system combines responsibility and expert knowledge and according to Prof. Munro, "Both are essential: one of them makes a government popular; the other makes it efficient. And the test of a good government is its successful combination of democracy with efficiency."

The relation between a minister and his subordinates has been explained in these words by Lord Milner: "The minister comes in, very often, knowing nothing at all about the business of his department. He has his policy, he has his ideas, but when he comes into contact with the practical difficulties, with the new fears, with the vast amount of accumulated knowledge and experience, which the permanent officials can bring to bear on the subject, those ideas almost invariably undergo considerable modification. Indeed, one of the chief duties of civil servants of the upper ranks is to give shape and substance to the vague aspirations, the misty ideas, of the politician, and as long as that duty is loyally performed, with the honest desire not to defeat the minister's policy, but to produce something workable, the civil servant does in a perfectly legitimate way exercise an important influence on the course of politics." According to Fisher, "Determination of policy is the function of ministers, and once a policy is determined, it is the unquestioned and unquestionable business of the civil servants to strive to carry out that policy with precisely the same goodwill whether he agrees with it or not. That is axiomatic and will never be in dispute. At the same time, it is the traditional duty of civil servants, while decisions are formulated, to make available to their political chiefs all the information and experience at their disposal, and to do this without fear or favour, irrespective of whether the advice thus tendered may be in accord or not with the minister's initial view. The presentation to the minister of relevant facts, the ascertainment and marshalling of which may



often call into play the whole organisation of the department, demands of the civil servants the greatest care. The presentation of influence from the facts equally demands from him all the wisdom and all the detachment he can command."

According to Bagehot, "It is not the business of a Cabinet Minister to work his department. His business is to see that it is properly worked." According to Ramsay MacDonald, "The Cabinet is the bridge linking up the people with the expert, joining principle to practice. Its function is to transform the messages sent along sensory nerves into command sent through motor nerves. It does not keep the departments going; it keeps them going in certain directions." According to Laski, "It (Civil Service) indicates consequences; it does not impose command. The decision which results is the minister's decision; its business is the provision of a material within which, in its judgment, the best decision can be made." To quote Laski again, "We send men into the Treasury not because they are trained economists; so also in the Ministry of Agriculture or the Board of Education. They are valuable as administrators less because they have expert knowledge of a technical subject-matter but because we believe, on the evidence rightly, that their training will endow them with qualities of judgment and initiative without which no Government can be successfully run. But these are exactly the qualities a politician must have if he is to be successful, normally, in the struggle for place."

### Civil Service in England

There has been a tremendous change in the Civil Service of England during the last hundred years. Before that, the whole system was extremely unsatisfactory. John Bright called the civil service as "the outdoor relief department of the British aristocracy." In 1780, Burke stated that uppermost with him "was the reduction of that corrupt influence, which is itself the perennial spring of all prodigality and of all disorder; which leads us with more than millions of debt, which takes away vigour from our arms, wisdom from our counsels and every shadow of authority and credit from the most venerable parts of our Constitution." In 1849, Sir Charles Trevelyan pointed out the existing evils in the Civil Service. According to him, it was overstaffed, inactive and incompetent. The people commonly considered the Civil Service as the last chance of livelihood for young men who were too stupid to be successful in the open competition of the professions outside and for the old who had already failed. The people who made the service a profession were habitually cheated out of promotion to the highest offices by the nominees of the powerful.

Reform was caused by the pressure of business on the Civil Service and by the mental energy of the utilitarian philosophy. There was a demand for the abolition of the system of patronage and it was conceded in 1853 when the Charter of English East India Company came up for revision. Lord Macaulay pointed out in these words the direction in which the change was to be made: "It seems to me that there never was a fact proved by

a larger mass of evidence, or a mere unvaried experience than this: that men who distinguish themselves in their youth above their contemporaries almost always keep to the end of their lives the start which they have gained." He analysed the operation of competitive examinations thus: "Under a system of competition, every man struggles to do his best; and the consequence is that, without any effort on the part of the examiner, the standard keeps itself up. But the moment that you say to the examiner not 'Shall A or B go to India?' but 'Here is A. Is he fit to go to India?' the question becomes altogether a different one. The examiner's compassion, his good nature, his unwillingness to blast the prospects of a young man, lead him to strain a point in order to let the candidate in if we suppose the dispensers of patronage left merely to the operation of their own minds; but you would have them subjected to solicitations of a sort it would be impossible to resist. The father comes with tears in his eyes, the mother writes the most pathetic and heart-breaking letters. Very firm minds have often been shaken by the appeals of that sort. But the system of competition allows nothing of the kind. The parent cannot come to the examiner and say, 'I know very well that the other boy beat my son; but please be good enough to say that my son beat the other boy'."

By an Order-in-Council of 1855, a *Civil Service Commission* of three members was set up and was entrusted with the duty of conducting examinations. By 1870, the system of competitive examinations was extended to all the services.

According to Dr. Finer, "The present organisation of the civil service is marked by three outstanding characteristics—Treasury control to unify and co-ordinate the work and organisation of the department; the Civil Service Commission as the creators and custodians of standards of efficiency; and the attempted connection between the ages at which the various grades of the services are recruited and the educational system of the country." The functions of the Civil Service Commission are to approve the qualifications of all persons proposed to be appointed, whether, permanently or temporarily, to any situation or employment in any of His Majesty's Civil Establishment, to make regulations prescribing the manner in which persons are to be admitted to the Civil Establishment and the condition on which the Commissioners may issue certificate of qualification and to publish in the *London Gazette* notice of all the appointments and promotions with respect to which certificates of qualifications are issued. Provision is made for a written test and a viva-voce examination. The viva was established in 1917 on the recommendation of the Committee on Class I Examination. It is designed to give the Civil Service Commissioners some evidence of the personality and character of the candidates for the Civil Service.

On October 1, 1947, the British Civil Service consisted of 9,46,000 persons out of which 2,50,000 were industrial staff. The administrative staff consisted of 4,399 persons, executive staff



50,520, clerical and sub-clerical 255,100, typing 29,605, professional, technical and scientific 42,382, inspectorate 5,260, messengerial 44,324, etc.

### *Growth of Non-Industrial Civil Service*

1901	116,413	1939	387,400
1911	172,352	1943	710,600
1914	280,900	1950	684,800
1922	317,721	1962	669,800

According to Prof. Laski, "The Civil Service, as a career, offers certain solid advantages to its members. Wanted good behaviour, and efficient service, the official has security, a salary with increments which compares not unfavourably with the best outside employment of a similar kind can offer, modest holidays with pay, sickness leave, and on retirement, a non-contributory pension which is roughly equal, in normal circumstances, to about two-thirds of his salary in the last years of his career. In all the lower grades of the service, moreover, he has a share through the system of Whitley Councils, in discussing and, in some degree, determining the conditions of his employment." (*Parliamentary Government in England*, pp. 329-30.)

Critics say that the grades of the service are too rigid. The methods of promotion below the administrative class are too mechanical. An overwhelming proportion of promotions go by seniority. The promotion board is less a real search for merit than a safeguard against the fear of favouritism. Enough encouragement is not offered by the system to those who would quickly demonstrate their capacity and exceptional talent. According to Dr. Finer, the weakness of the Civil Service has flown from its comparatively narrow recruiting ground and the lack of deliberate and systematic training on entry into the service. According to Walker, weaknesses of the Civil Service were the lack of knowledge and appreciation on the part of administration of the affairs of the outside world except in so far as they pertain to their work, the lack of knowledge of the activities and policies of the departments of governments other than those in which they serve and the failure to consider public administration as a science with a body of fundamental principles.

It is suggested that the probationary period should be strictly enforced. The officers should be discharged before or at the end of that period unless it is reasonably certain that they will become efficient administrators.

### **Tendency towards Bureaucratic Government**

In recent years, a complaint has been made against the bureaucratic tendencies of the government in England. In 1929, Lord Hewart, Lord Chief Justice of England, warned the public against the growing tendency towards bureaucratic control in his sensational book called *The New Despotism*. A similar attack was made by Ramsay Muir, Chairman of the Central Labour Organisation, in



1930. The next year, Prof. C. K. Allen of Oxford University published his book *Bureaucracy Triumphant* with a similar theme. To quote Ramsay Muir, "In a majority of cases, he (Minister) has no special knowledge of immense and complex work of the department over which he has to preside. He has to deal with a body of officials, who may be, and often are, men of far greater ability than himself, and who have been giving their whole time to the study of the problems of the office, during the years when he has been making his position in the world or taking hot air on platforms. They bring before him hundreds of knotty problems for his decision, about most of them he knows nothing at all. They put before him their suggestions supported by what may seem the most convincing arguments and facts. Is it not obvious that, unless he is either a self-important ass, or a man of quite exceptional grasp, power and courage (and both of these types are uncommon among successful politicians), he will in ninety-nine cases out of a hundred, simply accept their view and sign his name on the dotted line. On the whole, the policy of the office will nearly always prevail; its powers of quiet persistence and of quiet obstruction, its command of all the facts, are irresistible except to a man of commanding power."

It is admitted that the ministers are over-worked and are not experts in their departments but this does not mean that they entirely rely upon the bureaucracy. It is the duty of the minister to do things which will bring credit to his party. The ministry is already committed to a programme of reforms and the same has to be implemented during the tenure of the office of the ministry. If the ministers allow themselves to be controlled by their subordinates they cannot justify their position and the public is bound to condemn the same. However, there is nothing wrong in a minister taking the advice of his expert subordinates. As a matter of fact, he should try to get all the possible information from them and then make his decision. However, it is wrong to contend that the ministers allow their policy to be determined by their subordinates. Ministers like Lord Haldane, Lloyd George, Churchill and Arthur Henderson have been able to transform the spirit of officials during their tenure of office.

### SUGGESTED READINGS

- |                           |  |
|---------------------------|--|
| <i>Burns, C. D.</i>       | : Whitehall, 1921.                                 |
| <i>Campbell, C. A.</i>    | : The Civil Service in Britain.                    |
| <i>Critchley, T. T.</i>   | : The Civil Service Today.                         |
| <i>Finer, H.</i>          | : The British Civil Service.                       |
| <i>Gladden</i>            | : The Civil Service—Its Problems and Future, 1949. |
| <i>Gladden, E. N.</i>     | : Civil Service or Bureaucracy, 1956.              |
| <i>Greaves</i>            | : The Civil Service in the Changing State.         |
| <i>Hewart, Lord</i>       | : The New Despotism.                               |
| <i>Richards, Peter G.</i> | : Patronage in British Government.                 |
| <i>Robson W. A. (Ed.)</i> | : The British Civil Servant, 1937.                 |
| <i>Wheare, K. C.</i>      | : The Civil Service in the Constitution, 1954.     |



## CHAPTER 5

### THE BRITISH PARLIAMENT

#### Sovereignty of Parliament

According to Prof. Dicey, from a legal point of view, the sovereignty of Parliament is the dominant characteristic of English political institutions. Parliament means the King, the House of Lords and the House of Commons. Parliament thus defined has the right to make or unmake any law whatever. No person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament.

According to Sir Edward Coke, the power and jurisdiction of Parliament is so transcendent and absolute that it cannot be confined within any bounds. According to Blackstone, Parliament has sovereign and uncontrollable authority in the making, confirming, enlarging and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime or criminal. It can regulate the succession to the throne. It can alter the established religion of the land. It can change and create afresh even the constitution of the kingdom and of Parliaments themselves. It can do every thing which is not naturally impossible.

According to Sir Thomas Erskine May, "The constitution has assigned no limits to the authority of Parliament over matters and persons within its jurisdiction. A law may be unjust and contrary to sound principles of government; but Parliament is not controlled in its discretion, and when it errs, its errors can only be corrected by itself. To adopt the words of Sir Edward Coke, the power of Parliament 'is so transcendent and absolute, as it cannot be confined either for causes or persons within any bounds.'" (*Treatise on the Law, Privileges, Proceedings and Usages of Parliament*, p. 28.)

According to Sir J. A. R. Marriott, "From whatever point of view it be regarded, the English Legislature is the most interesting and the most important in the world. In point of antiquity incomparable, in jurisdiction the most extensive; and in power unlimited. Competent and at all times called upon to legislate for one-fourth of the human race, Parliament—or more technically 'the King in Parliament'—recognizes no domestic authority superior to itself. It is, in a word, sovereign in all matters ecclesiastical as well as temporal, within the dominions of the King."

According to Burleigh, England can never be ruined except by a Parliament which is omnipotent. According to Sir Matthew Hale, as Parliament was the highest and greatest court over which none other could have jurisdiction in the kingdom, the people were left without a remedy in the case of misgovernment of the country. According to De Lolme, "It is a fundamental principle with English

lawyers that Parliament can 'do everything but cannot make a woman a man and a man a woman.'

According to De Tocqueville, "In England, the Parliament has an acknowledged right to modify the constitution; as, therefore, the constitution may undergo perpetual changes, does not in reality exist, the Parliament is at once a legislative and a constituent assembly."

Prof. Dicey has referred to certain historical examples of parliamentary sovereignty, e.g., Act of Settlement, Act of Union, Septennial Act, Acts of Indemnity, etc. The Act of Settlement of 1701 made fundamental changes in the law of succession of the country. A large number of persons who were otherwise eligible to succeed to English throne, were excluded by an enactment of Parliament. The Septennial Act of 1716 extended the life of the existing Parliament which was elected for three years, to seven years. According to Dicey, the peculiarity of the Act was not that it changed the legal duration of Parliament or affected the Triennial Act; what was startling was that an existing Parliament of its own authority prolonged its own legal existence by four years and could have done perpetually.

A sovereign Parliament can adjudge an infant or minor of full age. It can attain a man of treason after his death. It can naturalise an alien and make him a subject-born. It can bastardise a child that by law is legitimate. It can legitimate one that is illegitimate and born before marriage absolutely. Parliament habitually interferes with private rights for public advantage.

A large number of Acts of Indemnity were passed from 1727 to 1828 to free the Dissenters from penalties. Likewise, Acts of Indemnity were passed after World War I and World War II. These Acts legalised what was illegal at the time when the same was done.

There is no other competing legislative authority in the country. The King, both Houses of Parliament, constituencies and law courts have claimed from time to time the right to independent legislative power, but all those claims have been rejected. The Statute of Proclamations of 1539 gave the King of England the power of issuing proclamations having the force of law, but happily that statute was repealed and England was saved from its evil consequences. If that had not happened, the English king would have become as much despotic as the King of France. In 1610, a solemn opinion or protest of the judges established the principle that no proclamation of the King could impose upon any man any legal obligation or duty, not imposed by common law or Act of Parliament. The last use of Proclamation was made in 1766 by Lord Chatham.

Likewise, resolutions of either House of Parliament do not have the force of law and consequently the Houses cannot act as rivals of the authority of Parliament.

In the same way, the authority of Parliament is not affected by



the will of the voters. The latter are not entitled to pass laws having the force of law. They can act only through their representatives and not independently of their own accord.

While the Acts of Parliament may override and constantly do override the decisions of the judges, the English judges do not claim or exercise any power to repeal a statute. Judicial legislation is subordinate legislation and subject to the supervision of Parliament.

Prof. Dicey referred to the three alleged legal limitations on the legislative sovereignty of Parliament and held that those limitations were not real. The first alleged limitation was that Parliament could not pass a law opposed to morality. However, it is pointed out that law is law whether it is moral or not. It is law because it is enacted by Parliament. We have to look to the form of law and not its contents.

Another alleged limitation is that Parliament cannot touch the prerogatives. Unfortunately, the real position is that many of the prerogatives have been taken away by parliamentary enactments.

The third alleged limitation is that a new Parliament cannot touch a law passed by a previous Parliament. However, this is not the case in actual practice. Although the Act of Union of 1800 was passed for ever, it was amended from time to time and finally was practically repealed in 1922 when the Eire came to have a separate existence.

After the above discussion, Dicey came to the conclusion that parliamentary sovereignty is an undoubted legal fact. It is complete both on its positive and on its negative side. Parliament can legally legislate on any topic which is a fit subject for legislation. There is no power which can come into rivalry with the legislative sovereignty of Parliament.

### Limitations on Sovereignty of Parliament

(1) Dicey pointed out two real limitations on the sovereignty of Parliament, external and internal. The external limitation was due to the possibility of popular resistance. Parliament will hesitate to pass laws which are likely to be opposed by the public. The internal check comes from the nature of the Sovereign power itself. Parliament, with the history of 18th century before its eyes, will not tax the colonies.

(2) According to Leslie Stephen, "The power of legislature is of course strictly limited. It is limited, so to speak, both from within and from without; *from within* because the legislature is the product of a certain social condition and determined by whatever determines the society; and *from without*, because the power of imposing laws is dependent upon the instinct of subordination which is itself limited. If a legislature decided that all blue-eyed babies should be murdered, the preservation of blue-eyed babies would be illegal; but legislators must go mad before they could pass such a law and subjects be idiotic before they could submit to it."

According to Prof. Laski, "No Parliament would dare to disenfranchise the Roman Catholics or to prohibit the existence of Trade Unions."

(3) In addition to the internal and external limitations pointed out by Dicey, many other restrictions on the Sovereignty of British Parliament cannot be ignored. It is true that Parliament can pass a law which is against the rules of international law, but ordinarily while interpreting the statutes, courts proceed on the presumption that Parliament did not intend to violate the principles of international law. It was laid down in the case of *West Rand Gold Mining Co. v. The King* that "*whatever has received the common consent of civilised nations, must have received the assent of our country.*"

(4) The press and public opinion are important checks on the sovereignty of Parliament. No Parliament dare pass any law which is opposed by the press or the public opinion. It cannot be denied that, ultimately, Parliament has to bow before the verdict of the people.

(5) Judicial interpretations also put some check on sovereignty of Parliament. Courts protect against interference with personal liberty, taking away private property without compensation and depriving a subject of the right of access to courts.

(6) Leagues and associations formed for political and economic purposes put a limit on the sovereignty of Parliament. They have to be consulted by Parliament before passing a measure affecting them. It is impossible to ignore those associations.

(7) The sovereignty of Parliament has also been limited by the Statute of Westminster, 1931. It is provided in that Act that no act of British Parliament passed after 1931 is to extend to any Dominion unless it is expressly declared in that Act that a Dominion has requested and consented to the same. Every Dominion has been given full liberty to pass any law it pleases even if it is opposed to any law of England. The Union Act of 1935 denies the sovereignty of British Parliament in the Union of South Africa.

The following quotation gives an insight into the real position of Parliament vis-a-vis the colonies: "A National Convention composed of delegates representative of all parties appointed by the colonial legislatures, unanimously prepared a draft constitution and the British Parliament had to approve of it in its entirety. A member of the House of Commons drew the attention of the House to a grammatical error and suggested that it should be rectified before the draft Constitution was passed. Sir Henry Campbell-Bannerman, while rejecting the suggestion, observed that faultless grammar was not essential to carrying on a government; that this draft constitution had been framed as a result of negotiations between the British Cabinet and the ministers of South Africa, and that they did not reserve to the British Parliament even the right of correcting a grammatical error. The constitution, therefore, recast in the form



of an Imperial Bill, was passed through both Houses of the British Parliament just as it was, without the slightest alteration."

### House of Lords

The British Parliament consists of two Houses: the House of Lords and the House of Commons. The one is essentially hereditary and the other is the representative of the people.

According to Prof. Laski, "There have been fairly continuous efforts to reform the House of Lords for something like forty years. That is a tribute at once to the pivotal position it occupies in our constitutional system and to the delicacy of the problems raised by its very existence. For as the second chamber of a political democracy, it is, by almost universal consent, an indefensible anachronism. That a body consisting of some seven hundred and fifty peers, all of them, save the Bishops and the law lords, hereditary, responsible to no one but themselves, should have the power to delay the enactment of any non-financial legislation for as much as two years is a startling thing. It has endured only because in each of the conflicts of the last generation the House of Lords has preferred to abdicate rather than to fight, and because it has thus far proved impossible to discover among parties any common agreement to the principles upon which it should be reformed." (*Parliamentary Government in England*, p. 111.)

### Composition of the House of Lords

The House of Lords consists of about 900 temporal and 26 spiritual peers. Although it is usually described as an hereditary house, it is not exactly so. There are many kinds of members of House of Lords and those can be classified thus:—

(1) The hereditary peers are in an overwhelming majority in the House of Lords. These peers also fall in three different categories. There are the Peers of England who were created before 1707 when England and Scotland were united. There are Peers of Great Britain who were created before 1800 when Great Britain and Ireland were united. Peers of the United Kingdom were created after 1801. There is no limit to the number of the hereditary Peers which can be created by the King on the advice of the Prime Minister. The power of the King to create an unlimited number of hereditary Peers has proved to be very useful in forcing the House of Lords to submit before a persistent House of Commons. It is true that an effort was made in the time of George I to fix the number of the hereditary Peers which could be created by the King at any time, but happily the attempt failed.

(2) There are the representative Peers of Scotland. The Act of Union of 1707 provided that Scotland was to send 16 members to the House of Lords and those 16 members were to be elected by the Peers of Scotland. At present, there are 31 Scottish Peers and when a new Parliament is summoned, they elect 16 members to represent them in the House of Lords. Provision had to be made for the representative Peers of Scotland because representation had

to be given to those Scottish Peers at the time of Union of England with Scotland.

At one time, it was thought that the Crown could not confer upon a Peer of Scotland a peerage of the United Kingdom entitling him to a hereditary seat in the House of Commons. However, this view was rejected by the Judges in 1782 while advising the House upon the claim of the Duke of Hamilton and Brandon.

(3) There are also the representative Peers of Ireland. The Act of Union of 1800 provided for the sending of 28 Irish Peers to the House of Lords. In 1800 there were 234 Irish Peers. The Peers of Ireland were to be elected for life. Things have changed since 1922 when the separate state of Eire was set up. No elections were held after that. In 1959, their number was only one. The office of Lord Chancellor for Ireland was abolished and now the machinery of election does not operate.

(4) There are 26 spiritual Peers in the House of Lords. They hold office by virtue of their office. The most important among them are the Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester. The other 21 spiritual Peers are chosen on the basis of their seniority of service.

(5) Nine Law Lords are appointed for life. They are selected on account of their great knowledge of law. It is these Law Lords who enable the House of Lords to act as the highest court of appeal. It is stated that Queen Victoria proposed a life peerage to strengthen the judicial element of the House of Lords, but the proposal was not accepted. However, the Appellate Jurisdiction Act of 1876 allowed the Crown to create life Peers.

(6) The Life Peerages Act of 1958 gives the Crown the power to confer a life peerage upon a man or a woman. There is no limit as to the number of life peers that can be created under the Act. The object of the law is to enable the representation of the Opposition to be increased and also to secure for the House of Lords the experience of distinguished men and women, particularly from outside, the ranks of active party politicians.

In 1960, Mr. Richard G. Casey, Australia's Minister for External Affairs, was made a life peer. A lot of importance was attached to that appointment as it was considered as the beginning of a new role that British House of Lords would play in British Commonwealth affairs in future. It is expected that peers from other Commonwealth countries would be created to give members of the Commonwealth a greater say in the debates in the House of Lords and also to give some meaning to the functions of that chamber.

It is to be observed that a hereditary peerage is created either by the issue of a writ of summons to the House of Lords, followed by the taking of his seat by the recipient of the writ or by letters patent. However, the latter method is invariably adopted. A

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1. The Peerage Act of 1963 enables hereditary peers to renounce their titles and status for life.



peerage created by letters patent almost always descends to the heirs male of the body of the grantee. A peerage created by a writ of summons descends to the male or female heirs of the grantee, whether lineal or collateral. Where there is only one female heir, she becomes a peeress in her own right. However, where there are two or more female descendants of equal degree, the elder is not preferred to the younger and both or all inherit as coparceners. In such cases, a peerage falls into abeyance. Such an abeyance may be terminated by the Crown in favour of one co-heir. It is possible that in course of time it may come to be vested only in one descendant. If there is any dispute regarding the right of a newly created peer to sit in the House of Lords, the same is decided by the House itself acting through the Committee of Privileges.

If the grantee of a peerage has no direct male heir, the letters patent may limit the peerage to the daughter of the grantee and heirs male of her body.

A peerage cannot be alienated or surrendered. A peerage has no connection with the tenure of land. This has been decided by the Berkeley Peerage case. An alien cannot receive a writ of summons to the House of Lords. Likewise, a similar summons cannot be issued to a bankrupt peer or an infant. An hereditary peeress in her own right may not take her seat, but a life peeress may do so. In the case of Viscountess Rhondda's Claim, it was held that the Sex Disqualification (Removal) Act, 1919, gave no right to a peeress in her own right to receive a writ of summons to Parliament. A peer who is a civil servant can take his seat in the House of Lords but he cannot speak or vote in the House. In 1958, the House of Lords adopted a new Standing Order relating to leave of absence. This order emphasises the obligation of the members of House of Lords to attend the sittings of the House in accordance with the writ of summons. However, a peer can apply for leave of absence for a session or a part of it. A peer who has been granted leave is not expected to attend the sittings of the House during the period of his leave.

### Privileges of Peers

The members of the House of Lords used to enjoy a large number of special privileges in addition to those enjoyed by the members of the House of Commons. However, many of them have disappeared. Still there are a few and it is advisable to refer to them. While the members of the House of Commons can approach the King collectively through the Speaker, the individual members of the House of Lords can approach the King to discuss public affairs. The members of the House of Lords have the right of recording a protest against any decision of the majority of the House in the journals. They have the right to try impeachments by the House of Commons. They have the right to commit for contempt of their privileges and that right extends beyond a session. Every Lord had a right to vote by proxy, but that system was



abolished in 1868. Formerly, Peers could be tried only by Peers in all cases of felony and treason, but the privilege with regard to felony was taken away in 1936. The Peers have the right to act as a court of final appeal for Great Britain and Northern Ireland.

### **Powers and Functions of the House of Lords**

(1) The House of Lords is the highest court of appeal for Great Britain and Northern Ireland. However, when the House of Lords sits as the highest Court of appeal, it is only the Law Lords who take part in the proceedings and not the others. This is what is required by a convention and not by an Act of Parliament.

(2) The House of Lords has the power to try those persons who have been impeached by the House of Commons for high crimes and misdemeanours. This power has become unimportant on account of the development of the principle of ministerial responsibility.

(3) The House of Lords could try Peers accused of treason or felony. However, the power was taken away in 1936 as stated above.

(4) The House of Lords is the upper chamber of the British Parliament and, as such, possesses legislative powers. Legally speaking, before the passing of the Parliament Act of 1911, the powers of both the Houses of Parliament were equal although a convention demanded that the House of Lords would not interfere with money bills. Formerly, an ordinary bill could be introduced either in the House of Commons or in the House of Lords, although the money bill could be introduced only in the House of Commons. However, every bill had to be passed by both Houses of Parliament before it became law.

A great change was made by the Parliament Act of 1911. According to that Act, a money bill could be introduced only in the House of Commons and was to be sent to the House of Lords a month before the ending of the session. Whether the Money Bill was approved by the House of Lords or not, the same became law. Thus, the power of the House of Lords with regard to money bill was completely eliminated. As regards the ordinary bills, they could be introduced in either of the two Houses. However, if a bill was passed by the House of Commons in three consecutive sessions of the same Parliament or of two Parliaments and a period of two years intervened between the second reading in the first session and the third reading in the third session, the same was to be considered to have been passed by both Houses of Parliament even if the House of Lords did not give its assent to it. Thus even in the case of ordinary legislation, the final word was left with the House of Commons.

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1. Ramsay Muir points out that the law court which is called 'the House of Lords' is in reality quite distinct from the legislative assembly of that name.



The question arises as to how far in actual practice the legislative powers of the House of Lords in the case of ordinary bills have been restricted. It goes without saying that according to the letter of the law, the House of Commons can pass any bill in the teeth of opposition of the House of Lords. All that is required is that it must pass the same in three consecutive sessions of Parliament. On paper it seems to be a very simple affair, but that is not so in actual practice. Parliament is overworked and the members of the House of Commons do not have enough time to pass all the required legislation within the time at their disposal. They have to resort to the device of delegated legislation with a view to meet the situation. If the members of the House of Commons do not have enough time to pass their bills even once, it is too much to expect from them to pass them three times. As a matter of fact, that is bound to be the case if the members of the House of Commons once decide to defy the House of Lords and try to pass legislation against their wishes. In such a contingency, there is nothing to check the members of the House of Lords from rejecting every bill coming from the House of Commons. As the members of the House of Commons are practical persons, they would not create such a situation. Wisdom demands that there should always be some sort of compromise between the two Houses. The result is that whenever the members of the House of Lords become obstinate on any particular point, the members of the House of Commons try to meet them half way and do not carry things to extremes. It is the practical sense of both the Houses that has been responsible for avoiding clashes between the two. That also explains the fact why a large number of bills have not been passed by Parliament without the approval of the House of Lords.

The only Bills which have been passed into law with the help of the Parliament Act of 1911 are the Welsh Church Act, 1914, the Government of Ireland Act, 1914 and the Parliament Act of 1949. The Government of Ireland Act was repealed before it became operative. The Welsh Church Act operated after postponement caused by World War I. The Parliament Act of 1949 made changes in the Parliament Act of 1911 itself.

It is pointed out that the powers given by the Act of 1911 cannot be usefully exercised by the House of Commons in times of emergency. A bill can be passed but the ministry has to wait for a long time. Formerly, the period of waiting was two years, but the same has been reduced to one year by the Amending Act of 1949.<sup>1</sup> The new Act requires the bill to be passed in two suc-

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1. As regards the passing of Parliament Act of 1949, the Parliament Bill was introduced in October, 1947. The Bill was passed by the House of Commons but rejected by the House of Lords. After its rejection by the House of Lords, the Government wound up the session in July 1948. Parliament re-assembled in September, 1948 for a short interval solely for the purpose of passing the Bill for the second time. The Bill was again sent to the House of Lords and rejected. The third session started in October, 1948 and the



cessive sessions of House of Commons and not in three successive sessions as before. In spite of the shortening of the period of waiting, the powers given by the Act of 1911 cannot be usefully exercised in times of crisis and emergency. No wonder, the members of the House of Commons try to keep the House of Lords in good humour and not boast of the powers given to them by the Act of 1911.

### Criticism of the House of Lords

(1) The House of Lords has been criticised from many quarters. According to Prof. Laski, "The House of Lords is not an impartial and objective body which takes an independent and detached view of the public opinion it encounters. Its composition makes it and is intended to make it a fundamental part of the institutional strategy of the Right. It is intended to see as Lord Balfour once put it, that in office or out of it, the Conservative Party is permanently in power."

#### Party Affiliations of Peers

Year	Labour	Liberal	Conservative	National Liberals etc.	No Informa- tion
1939	16	56	517	31	126
1954	60	43	465	16	249

(2) According to Ramsay Muir, the House of Lords is "the common fortress of wealth." More Directors of Public Companies have seats in the House of Lords than in the House of Commons. There is no great national industry whose leadership does not find appropriate representation in the House of Lords. The House is dominated by vested interests and such big industries as wine, etc.

(3) According to A. L. Rowse, "A study of its record reveals that the House of Lords, by its very nature, has placed great obstacles in the way of the legislative programme of those Governments only that were Liberal or non-Conservative; that it has frequently accepted legislation from Conservative governments which it has rejected from Liberal; that instead of being an independent House, it acts as one wing of the Conservative party looking after the interests of Conservatism when out of power, as one of its members put it; and that in the course of years, it has worked out an effective technique of legislative obstructions by which it has been able always to delay and often to destroy the legislation of governments it did not like, wearing them down by a process of attrition, so that they lost their popularity and were replaced at the polls by governments it did like, when it could retire once more into a state of dignified and secure quiescence."

(Continued from page 75).

Parliament Bill was passed by the House of Commons after the lapse of twelve months. The Parliament Bill was sent to the House of Lords for the third time. Although it was rejected by the House of Lords, it received the royal assent on 16th December, 1949 and became law.



(4) According to Sidney and Beatrice Webb, "Its (House of Lords) decisions are vitiated by its composition—it is the worst representative assembly ever created, in that it contains absolutely no members of the manual working class; none of the great class of shopkeepers, clerks and teachers; none of the half of all the citizens who are of the female sex; and practically none of the religious non-conformity of art, science or literature." (*A Constitution for the Socialist Commonwealth of Great Britain*, p. 63.)

According to Augustine Birrell, "The House of Lords represents nobody but itself and it enjoys the full confidence of its constituents."

(5) The critics point out to the irregular attendance of the meetings of the House of Lords by its members. According to Laski, "The House of Lords consists of some seven hundred and fifty members; but it is a very different body in its working aspects. Its normal attendance is about thirty-five; and there are only thirteen occasions since 1919 when more than two hundred members have been present at debate. In the same period, the average attendance at a division has been just under a hundred, and the number of peers whose speeches averaged more than one each year is ninety-eight." Nearly half the members of the House never contributed to the debate by speeches; and there are over one hundred peers (excluding minors) who have not yet taken the oath. Many peers so seldom show their faces in the House of Lords that the attendants even do not recognise them. It is stated that when the great rally of the House of Lords was made in order to defeat the second Home Rule Bill of Gladstone in 1893 one peer was stopped by the doorkeeper who asked him if he were really a peer. The answer was: "Do you think if I weren't, I would come to this blankety, black hole?"

(6) It is pointed out that a hereditary chamber is an anachronism in a democratic age. As it is foolish to talk of hereditary mathematicians, hereditary politicians, hereditary historians, etc., likewise it is unhappy to conceive of a hereditary second chamber. According to Gen. Bright, "The House of Lords is not and cannot be perpetual in a free country."

✓ According to Abbe Sieyes, "If a second chamber dissents from the first, it is mischievous, if it agrees with it, it is superfluous." This description applies to the House of Lords. When a Labour or Liberal ministry is in power the House of Lords dissents from it and consequently is mischievous. It does not examine the legislation on its merits, but acts according to its prejudices. On the other hand, when the Conservative party is in power, the House of Lords always agrees with it and consequently is superfluous. It merely duplicates the work of the House of Commons and consequently has no utility at all.

The House of Lords is representative of those interests who are opposed to the general well-being and as such is a hindrance to national progress.



According to Malcolm MacEwen in the *Daily Worker*, "I would rather entrust the affairs of the nation to an hereditary chamber of fish-mongers than to the House of Lords."

### Utility of the House of Lords

While it is admitted that the House of Lords suffers from many shortcomings, it cannot be denied that it performs very useful functions also. Had that not been so, the House of Lords would have been abolished long, long ago. The committee on the reform of the second chamber presided over by Lord Bryce in 1918 pointed out four distinct services rendered by the House of Lords. It acts as a delaying chamber. It interposes as much delay in the passing of a bill into a law as is needed to enable the opinion of the nation to be adequately expressed upon it. This is specially needed regarding those bills which affect the fundamentals of the Constitution or introduce new principles of legislation or raise issues whereupon the opinion of the country appears to be almost equally divided.

The House of Lords gives an opportunity for full and free discussion of large and important questions, such as those of foreign policy, at moments when the House of Commons may happen to be so much occupied that it cannot find sufficient time for that. Such discussions are more useful because they are conducted in an assembly whose debates and decisions do not involve the fate of the government.

The House of Lords affords free scope for the initiation of Bills dealing with the subjects of non-controversial character which can have an easier passage through the House of Commons when they have been fully discussed and put into a well-considered shape before being submitted to it.

The House of Lords examines and revises bills coming from the House of Commons. This function has become very important because the pressure of work in the House of Commons sometimes does not allow the members of the House of Commons to discuss every bill at length. The time-saving devices adopted in the House of Commons are likely to leave certain parts of the bill unconsidered or only partially considered.

Referring to the Transport Act of 1947 which was hurriedly passed by the House of Commons and discussed in detail by the House of Lords, *The Times* wrote thus: "Seldom if ever have the surviving functions of the Upper House been more important. The most casual glance at the Bill as it leaves the Commons suggests that if a revising Chamber did not exist it would have to be invented. The Bill will no doubt pass into law. There is no question of the Lords frustrating the will of the Commons. But it is vitally important that, before it is passed, those sections and clauses which have so far been discussed inadequately or not at all should be subjected to the impartial, practical and expert examination of which the Upper House is capable".



It is pointed out that although the number of members of the House of Lords who actually attend its meetings is very small, the quality of debates is very high on account of the qualifications of the members. There are many members of the House of Lords who have acted as Governors-General of India, Canada or other Dominions. According to Laski, the debates of the House of Lords are likely to be conducted by statesmen of standing and experience, with occasional interjections from representatives of Churchmen or an eminent law lord. "It is a leisurely chamber; and in quiet times again it can scrutinize with leisured efficiency the bill sent up to it from the House of Commons. It can raise, also, such public questions, which the government of the day does not believe to be ripe for legislation."

The House of Lords performs a very useful function in the matter of private bills. As the members of the House of Lords have a lot of free time and are not otherwise worried about financial difficulties, they can afford to examine carefully the provisions of private bills which are sent from time to time to Parliament for enactment. If the House of Lords were to be abolished, the burden will fall on the shoulders of the members of the House of Commons which it will be practically impossible for them to put up with. The reason is that the members of the House of Commons are very busy persons.

The House of Lords can perform another useful function. If the services of any person are considered to be useful for the country and that person is either unwilling or unfit to fight any election, he can easily be created a peer and entrusted with the work of government. In this way, the services of experienced persons can be availed of.

According to Dr. Ogg, the roll of the House of Lords "is undeniably crowded with the names of members who lack both ability and interest. But neither the House of Commons nor any other legislative body is composed entirely, or perhaps even mainly, of men who are all that could be desired; and in the case of the House of Lords the unfit rarely darken the doors of the Chamber, or if present take any active part. The work of the House is done very largely by men who have genuine ability, interest and experience; and of these there are, fortunately, many. Not all of the fittest do, or can, participate regularly. Some after election to, or inheritance of, a peerage, very naturally and properly go on with their professional, scholarly or business careers. After all, it must be remembered that for most of them membership is an involuntary matter which cannot always be accepted as transcending other obligations already incurred. But it is doubtful whether, by and large, the actual working of the House of Lords is surpassed in its resources of intelligence, integrity and public spirit by the House of Commons. Industry, finance, agriculture, science, literature, religion—all are represented there. Spiritual and intellectual, as well as material forces find expression. The country is served from the red leather benches by men who have built up its prosperity,



administered its great dependencies, risen to its highest positions in land, diplomacy, wars, statecraft and learning." Again, "The House of Lords have served the British nation well in the past. It may of course, presently be thrown into the discard. Wisely reconstructed, it should, however, be capable of still greater usefulness in the years that lie ahead."

According to W. B. Munro, the House of Lords appears to be doing its work fairly well on the whole. "It examines and revises non-financial measures. It insists, when the occasion arises, that ample time be given for a full public discussion of all such bills before they become a part of the law of the land. It compels sober second thought and gives opportunity for passions to subside."

About the utility of the House of Lords, Bagehot wrote thus: "With a perfect Lower House, it is certain that an Upper House would be scarcely of value. If we had an ideal House of Commons perfectly representing the nation, always moderate, never passionate, abounding in men of leisure, never omitting the slow and steady forms necessary for good consideration, it is certain that we should not need a higher chamber.... But though beside an ideal House of Commons, the Lords will be unnecessary and, therefore, pernicious, beside actual House revising and leisured legislature is extremely useful, if not quite necessary."

According to Ogg and Zink, "The fact is not to be overlooked, too, that many of the most active members (of the House of Lords) have in their earlier days had the advantage of long service in the House of Commons—that, indeed, the popular branch is to a very considerable degree a nursery of the House of Lords. No student of English history needs to be told that upon sundry occasions the Upper House interpreted the will of the nation, or the realities of a political situation more correctly than the lower, and that more than once it has saved the country from hasty and ill-considered legislation. It is not altogether the sort of a second chamber that Englishman would plan if they were confronted today with the necessity of creating one *de novo*. But since it exists and is so deeply woven into the texture of the national life, the most sensible thing would seem to be, not to discard it outright, but rather to restrict it on such lines as those laid down in the Bryce report. Certainly that would be most in keeping with the traditional method of English political development."

According to Laski, "If there is to be a second Chamber at all in a democratic state, the House of Lords, when a Conservative Government is in office, is perhaps as good a second Chamber as there is in the world. Its debates reach a high standard; it does not have to consider any temporary gusts of passion by which an electorate may be swept, it has time to discuss all kinds of issues which require ventilation and can hardly hope for discussion in the overburdened House of Commons. The real problems to which it gives rise occur only in periods of deep controversy when a progressive government is in power. For it is then that there sweeps



into view its character as the 'common fortress of wealth'. It becomes the reserve power of the Conservative Party, determined to correct the consequences of a progressive victory at the polls, so far as lies in its power."

The view of Roland Young is that the House of Lords has accepted its constitutional position and it permits the House of Commons to exercise the greater impact on legislation, to determine its contents, to propose amendments and to put the legislation in final shape. However, the House of Lords fulfil the function of a revising chamber by amending some legislation, but its members are rarely headstrong in insisting on having their own way. The general docility of the House of Lords in going along with the Government is such that on an occasion in 1959 when Mr. Bevan wanted a free vote on the Gambling Bill, he argued that if the Government were defeated in the House of Commons, everything could be put right in the House of Lords. Sometimes, the members of the House of Lords take a strong stand. In 1956, they defeated the Death Penalty Abolition Bill by a vote of 238—95. The Bill had been passed by the House of Commons on a free vote and against the wishes of the Government. The House of Lords occasionally asserts its authority on minor matters, but on the whole, it is not a troublesome and irresponsible body which creates special problems for the Government to sort out.

✓ The House of Lords has developed a role which, in many ways, is complementary to that of the House of Commons. The House of Commons has become enmeshed in all types of political activities, including the struggle of power to form the Government. By contrast, the deliberations of the House of Lords are less restricted by the details of the execution of policy or legislation. The peers are less affected by the exigencies of political competition. The House of Lords has more freedom to consider questions of public policy, to the envy of some members of the House of Commons. Some might argue that the House of Lords is without influence because its political power is restricted, but this thesis is difficult to prove. Primarily, the House of Lords provides a forum where public questions are discussed and the membership is large enough to provide a cluster of interested specialists on the various topics considered.

According to Bernard Crick, "The true function of the Upper House is to save time for the Commons; to give more time than can the Commons for the scrutiny and suggested revision of complex public Bills and of statutory instruments; and to discuss and debate not so much great issues of public policy but matters of administration and of the working of social policies for which the Commons seemingly has little time, or even, with the declining use of Select Committees, inclination. If this administrative, bureaucratic, scrutinizing conception of an Upper House as a Chamber of Review (or House of Correction?) could be grasped, and the composition made appropriate, then one could envisage many useful additional functions being undertaken by such a



thoroughly de-politicized 'Lords.' Committees could undertake work of investigation as well as scrutiny, to allay the continued public worry, and to fill the real gap in Ministerial accountability, about the workings not merely of systems of public tribunals and inquiries, vide the Franks Report, but also the greater untribunalised areas of ordinary administration, vide the Whyatt Report. It would be a proper place for the Standing Council on Tribunals and even, with Law Lords active, a final Court of Administrative Appeals. Many forms of public inquiry, even many topics handled by inter-departmental committees, at the moment completely outside the scope or control of Parliament, could be undertaken or reviewed by such a Second Chamber. In this context the composition and work of the *Conseil D'Etat* of the French Fourth Republic deserves far more sympathetic study from British parliamentarians.

"But the main point is that the functions of a reformed and efficient Second Chamber should be studied in relation to the work of the Commons. It is for the Commons to use the Upper House as a policy-making body uses committees of consultants, advisers and scrutineers. The solution to the House of Lords problem will not be found until the next Select Committee on Procedure of the House of Commons has, in its terms of reference, the function of the House of Lords." (*The Reform of Parliament*, pp. 144-45.)

### Proposals for Reform of the House of Lords

A reference may be made to the various schemes which have been put forward from time to time for the reform of the House of Lords. Lord Russell proposed in 1869 the creation of life-peers but his proposal was rejected. In 1888, Lord Salisbury proposed the gradual creation of 50 life-peers but nothing came of it. It was also proposed to discontinue the issuing of a writ of summons to undesirable members of the House of Lords. The measure was dubbed as Black Sheep Bill and met with a similar fate.

The Lansdowne Plan of 1909 proposed a House of Lords of 330 members. It was to consist of 100 peers chosen by the whole body of the peers, 100 persons to be appointed by the Crown, 123 persons to be elected by the House of Commons sitting in regional groups, five bishops to be chosen by the whole body of bishops, etc. The princes of the royal blood, archbishops and Lords of Appeal in ordinary were to be members of the House of Lords. The Crown could create not more than five peers in a year. The scheme was rejected.

A parliamentary committee of 30 members with equal membership from both Houses was set up under the chairmanship of Lord Bryce and it made its recommendations in 1918. The total membership of the House of Lords was to be reduced to 327. Out of these, three-fourths were to be elected by the members of the House of Commons by means of proportional representation. For purposes of election, the commoners were to be grouped into 23 divisions. No sitting member of the House of Commons was to



be elected to the House of Lords. The rest of the members were to be selected from the peerage by a joint Standing Committee of the two Houses. The scheme was to be put into operation by stages. Ultimately, the members of the House of Lords were to be elected for 12 years, one-third retiring after every four years. A joint committee of the two Houses was to decide whether a particular bill was a money bill or not. In the case of a disagreement between the two Houses, the matter was to be referred to a joint committee of 60 members—30 members taken from each House.

According to the Bryce plan, the reconstituted House of Lords was to perform the following functions:

(1) The examination and revision of bills brought from the House of Commons, a function which has become the more needful since, on many occasions during the last thirty years the House of Commons has been obliged to act under special limiting debate.

(2) The initiation of bills dealing with subject of a practically non-controversial character which may have an easier passage through the House of Commons if they have been fully discussed and put into a well considered shape before being submitted to it.

(3) The interposition of so much delay (and no more) in the passing of a bill into law as may be needed to enable the opinion of the nation to be adequately expressed on it. This would be specially needed as regards bills which affect the fundamentals of the constitution or introduce new principles of legislation, or which raise issues whereon the opinion of the country may appeal to be almost equally divided.

(4) Full and free discussion of large and important questions such as those of foreign policy, at moments when the House of Commons may happen to be so much occupied that it cannot find sufficient time for them. Such discussions may often be all the more useful if conducted in an assembly whose debates and divisions do not involve the fate of the executive.

In 1922, the Cabinet appointed a committee of its own and the latter submitted five resolutions. In addition to the peers of the royal blood, spiritual peers and law lords, there were to be added to the House of Lords some members elected directly or indirectly, a few hereditary peers elected by their order, and a few members nominated by the Crown. The number was to be fixed by law. Excepting the peers of the royal blood and law lords, all other peers were to hold office for a term of years to be fixed by law. The total membership of the House of Lords was to be about 350. A joint committee of seven members from each House was to be appointed at the beginning of each Parliament to determine whether a Bill was partly or wholly a money bill. The newly constituted House of Lords was ~~not~~ to have the authority to amend or reject a money bill. The Speaker of the House of Commons was to be the ex-officio chairman of the joint committee. The pro-



cedure as laid down in the Parliament Act of 1911 was not to be applied to the passing of any bill which intended to alter or amend the constitution or power of the House. These resolutions were also shelved.

In 1925, there was discussion of a plan brought to the House of Lords by Birkenhead, but nothing came of it.

In 1922, the House of Lords debated and adopted a resolution declaring that it would welcome "a reasonable measure limiting and defining the membership and dealing with defects inherent in the Parliament Act." A scheme of reconstruction on lines similar to those proposed in the resolutions of 1927 was presented on behalf of the Government, but nothing came of it.

In 1928, Lord Clarendon suggested that the House of Lords should consist of 150 members elected by the peers and 150 members nominated by the Crown according to the strength of the various parties in the House of Commons. A few members were to be appointed by the Crown as life-peers.

In 1932, Lord Sailsbury proposed a House of Lords consisting of 300 members; 150 were to be elected by the peers for 12 years and 150 to be nominated by the Crown for the same period. The Crown was not to be empowered to create more than 12 new peers in a year. The powers of the House of Lords were not to be changed except that the definition of a money bill was to be decided by a joint committee of the two Houses presided over by the Speaker of the House of Commons.

In 1934, the Labour Party declared that "the Labour Party, given a majority, would interpret the mandate as conferring upon it the right, particularly if the House of Lords seeks to wreck its essential measures, forthwith proceed to the abolition of that Chamber."

In 1947, Prime Minister Attlee proposed certain restrictions on the powers of the House of Lords. Certain principles were agreed upon by leaders of all the parties. The House of Lords was to be supplementary to and not a rival of the House of Commons. The right to attend and vote in the House of Lords on the hereditary basis was to be abolished. The House of Lords was to consist of about 300 members. The House of Lords was to be re-constituted in such a way that no party was to have a permanent majority. Its members were to be taken from both sexes and paid remuneration for their service. Provision was to be made for disqualification of members of Parliament on grounds of neglect of duties and incompetence. The matter had to be dropped as there was no agreement with regard to the composition of the House of Lords.

In 1947, the Labour Government introduced a Bill seeking to reduce the period of suspensive veto from two years to one year. An Act of 1949 reduced the period to one year.

The following is the "Agreed statement" of the Conference



of Party Leaders on the Parliament Bill of 1947 held in 1948:—

“Proposals relating to the reform of the Composition of the House of Lords were discussed first. If it had been possible to achieve general agreement over the whole field of Powers and Composition, the Party representatives would have been prepared to give the following proposals further consideration, so as to see whether the necessary details could be worked out and, if so, to submit them, as part of such an agreement, to their respective Parties:

(1) The Second Chamber should be complementary to and not a rival to the Lower House and, with this end in view, the reform of the House of Lords should be based on a modification of its existing constitution as opposed to the construction of a Second Chamber of a completely new type based on some system of election.

(2) The revised constitution of the House of Lords should be such as to secure as far as practicable that a permanent majority is not assured for any one political party.

(3) The present right to attend and vote based solely on heredity should not by itself constitute a qualification for admission to a reformed Second Chamber.

(4) Members of the Second Chamber should be styled ‘Lords of Parliament’ and would be appointed on grounds of personal distinction or public service. They might be drawn either from Hereditary Peers, or from commoners who would be created Life Peers.

(5) Women should be capable of being appointed Lords of Parliament in like manner as men.

(6) Provision should be made for inclusion in the Second Chamber of certain descendants of the Sovereign, certain Lords Spiritual and the Law Lords.

(7) In order that people without private means should not be excluded, some remuneration would be payable to members of the Second Chamber.

(8) Peers who were not Lords of Parliament should be entitled to stand for election to the House of Commons, and also to vote at elections in the same manner as other citizens.

(9) Some provision should be made for the disqualification of a member of the Second Chamber who neglects, or becomes no longer fitted to perform his duties as such.”

According to Dr. Jennings, if the problem of the reform of the House of Lords is considered at a time when there is no controversy between the Houses, the following principles are likely to be accepted:

“(1) That it is desirable to have a House of Lords where debates on matter of public importance but of political controversy can be held, where Government legislation can be ‘cleaned up’,

and where attention can be directed to the more technical but less controversial aspects of parliamentary control of administration;

“(2) That for this purpose it would be convenient to have the House of Lords composed of two classes of members (in addition to the Royal Dukes, some of the archbishops and bishops, and the lords of appeal);

“(i) Persons who had achieved distinction in the various branches of national life, whose views on some aspects of public policy would be worthy of attention, and who would be appointed as lords of Parliament for life; and

“(ii) Persons more closely in touch with public opinion, but not necessarily active politicians, elected for each Parliament, by the system of proportional representation, by the members of the House of Commons;

“(3) That this arrangement would probably result in a permanent Conservative majority, but that this would not be seriously objectionable to the other parties if the maximum period of delay were one year and money bills could not be held up;

“(4) That no legislation of a constitutional character should be passed without the consent of the House of Lords unless passed by the House of Commons in two successive Parliaments.” (*The English Constitution*, pp. 106-7.)

According to Roland Young, the House of Lords carries on a number of different functions, including some which are not normally associated with a legislative and deliberative body. Although the hereditary aspect of its membership is pronounced, new talent is constantly being added. The effective membership is less than five hundred and within this larger group there is a corps of peers who are fairly regular in their attendance and who make it possible to carry on business in the traditional parliamentary fashion. Partisanship counts for something, but the party ties are more loosely worn than in the House of Commons. There is a representative element in the House of Lords which extends to many particular groups in society and which, in some cases, re-emphasizes the continuous link of the present with the past. (*The British Parliament*, p. 67.)

We may conclude this discussion with the following observations of Prof. Laski: “There is, then, no Conservative principle for the reform of the House of Lords that can hope for the assent of the Labour Party. It should be added that no Labour proposal, either, is likely to secure the co-operation of Conservatives. The formal policy of the party is still in favour of single chamber government, and there is reason to suppose that this still commands a considerable body of support. That old view of Abbe Sieyès that if the second chamber agrees with the first it is superfluous, while if it disagrees it is obnoxious, still seems to many commonsense. Post-war experience of the parliamentary system, moreover, has tended to strengthen this view. It has shown that a second cham-



ber either tends to be part of the technique of reaction against a progressive Government, or that, in any case, its main result is to slow down the rate of change at a period when the facts call for a rapid adjustment of social principles. The Labour Party has not been impressed by the view that, since most modern States have a second Chamber, its existence may almost be taken as an axiom of political experience. For many of its members, that judgment simply confuses the ancient with the essential; and Socialist writers have pointed out that on the side of the principle of a second Chamber are thinkers of the quality of Bentham, Franklin, Condorcet, and Jefferson.

"But the problem has not been considered in general principle since the war. If it should be, it is possible that the party would accept the idea of a small revising Chamber on the condition that it had no power effectively to delay the passage of legislation approved by the House of Commons. The new body is envisaged as perhaps a hundred members in number; and it would be elected by each newly elected House of Commons from lists prepared by its constituent parties in proportion each to its own strength. The composition of the body would, therefore, reproduce that of the House of Commons; and its membership would be renewed after each dissolution of that House. A Government with a majority in the popular chamber would, therefore, find its majority ready-made in the new revising body. It would have no reason to fear there the destruction or the delay of its programme. All the functions now usefully performed by the House of Lords could be performed also by the new body. It could contain men not less eminent on either side, if they were prepared to stand for election in the name of their party. It could serve as useful place of retirement for elder statesmen who no longer felt equal to the heat and stress of popular election and the tiring work of the Commons. It could ventilate great subjects in a great way, as the House of Lords is accustomed to do. It would be able to adopt a classic formula, to advise and encourage and warn. The one vital power of which it would be deprived would be the power to interfere with the effective passage of the Government programme to the statute book." (*Parliamentary Government in England*, pp. 123-24.)

### House of Commons: Composition

Although the House of Commons is called the Lower House, it is more important and powerful than the House of Lords. The House of Commons elected in 1945 had 640 members. The Representation of the People Act, 1948, fixed the number at 625. By the House of Commons (Redistribution of Seats) Act, 1949, as amended in 1958, four permanent boundary commissions for England, Scotland, Wales and Northern Ireland were set up. The Speaker is the chairman of each of the four commissions. Provision has been made for a periodic review of constituencies by the commissions at intervals of not less than 10 or more than 15 years from the date of the submission of the Commission's last report with a

view to recommending redistribution in accordance with changes in the number of electors. The review in 1954 resulted in the abolition of six constituencies and the creation of 11 new ones.

A uniform qualification for men and women was introduced by the Representation of the People (Equal Franchise) Act, 1928. Every adult having residence for a qualifying period of three months ending on 1st June was given the right of vote. A person who occupied land or premises for business purposes of the annual value of £10 for three months was also given the right of vote. The husband or wife of an occupier of such land or premises was also given the right of vote. Likewise, the graduate of a university in the United Kingdom was given the right of vote. The Representation of the People Act, 1948, abolished the qualifications based on business premises and a University degree. The result was that plural voting was completely abolished. The only qualification at present is residence in a particular place on 10th October which is the qualifying date. The old requirement of a qualifying period of residence has been abolished.

The right of voting cannot be exercised in England by an alien, infant, mental patient, peer, a person convicted of treason or felony who has not completed his punishment or has not been pardoned provided he was sentenced to imprisonment for more than twelve months and a person convicted of corrupt and illegal practices at election. A person becomes adult at the age of 21 and no person below that age has the right to vote.

There are certain categories of persons who cannot become members of the House of Commons. This is so in the case of aliens, infants, mental patients, peers, clergymen bankrupts, persons guilty of corrupt or illegal practices, persons convicted of treason or felony who have not completed their term of imprisonment or not pardoned and holders of certain offices. The House of Commons Disqualifications Act, 1957, specifically mentions the particular office-holders who cannot become members of Parliament. A large number of judicial officers, from a judge of a High Court or Court of Appeals to a Resident Magistrate, cannot stand for election to House of Commons. A person who is a civil servant of the Crown, whether permanent or temporary, whether wholetime or part-time, cannot be a member of House of Commons. This also applies to foreign service and overseas civil service. A member of the regular armed forces of the Crown cannot be a member of House of Commons. A member of any police force cannot stand for election. If a person is a member of the legislature of any country or territory outside the Commonwealth, he cannot be a member of House of Commons. A person who is a member of a commission, board or administrative tribunal cannot be a member of House of Commons. Provision has been made for amendment by way of addition or omission or the removal of any office from the schedule relating to the disqualification for membership of the House of Commons by an Order in Council approved by the House of Commons.



Critics point out certain defects in the system of elections to the House of Commons. The system of majority vote which prevails in England fails to make the House of Commons a true mirror of public opinion outside. In a constituency where more than two candidates contest the same seat, it is just possible that the successful candidate may not obtain a majority of the votes and yet be elected to represent his constituency. In the majority of constituencies, there are two or three candidates. When there are three candidates, the elector can have some measure of freedom of choice, but even then, the candidate whose views most nearly correspond with those of the electors may not, in his judgment, be a desirable person to be sent to Parliament. He may hold some opinion from which he strongly dissents. Where there are only two candidates, there are always a large number of voters who do not agree with either. For example, one of them may be a Protectionist and the other a Socialist and the voter may believe that both protection and socialism are ruinous to the country. If in spite of that he votes for any candidate, his opinion will be misrepresented and his support will be given to a cause which he strongly disapproved. The only alternative for him is either not to vote at all or to vote for a person who is less objectionable. Very often, he takes the latter course. The result is that it is never possible to tell, in any particular case, whether the majority which a candidate has obtained, is a real majority or not. This is true of voting throughout the country as a whole. Moreover, the successful candidate may obtain only a small minority of vote actually cast and yet may be presumed to be the representative of the majority.

The results of the general elections in England show an amazing distortion of the popular will. If there are three parties contesting the election, it is possible that one party may obtain the largest aggregate of votes and yet not win a single seat in the House of Commons. That will be the case if the candidates of the party run second in most of the constituencies while the candidates of its rival sometimes win by small majorities and sometimes lose by big majorities. A party which is in a minority in the country may obtain a large majority in the House of Commons and this has actually happened on three occasions after the First World War. The result is that every election becomes a gamble and this gambling element brings an extremely unhealthy influence into the policy of governments and the political life of the nation.

On the occasion of the general elections of 1918 soon after the ending of the First World War, the Coalition won 472 seats in the House of Commons and the other parties got 130 seats. Thus, the Coalition got a majority of nearly four to one. However, an analysis of the votes obtained by the various parties shows that the Coalition parties got only 52% of the total votes cast and the Opposition parties got 48%. If the number of seats had been strictly in proportion to the number of votes secured, the Coalition would not have got a majority of 342 but of only 30. In 1922, the Conservative Party won 347 seats in the House of Commons

and secured a clear majority of 79 over all other parties. In spite of that, the Conservative Party secured only 38% of the total votes cast, the Liberals polled 28.5% and the Labourites 29.5%. Although the Conservatives were the largest Party, they ought not to have gained a clear majority. The Liberals suffered the most and the Conservatives gained at the cost of others. Thus the House of Commons did not represent the strength of the political parties in the country.

The general elections of 1923 were fought on the issue of protection. The Conservatives obtained 38% of the votes as in 1922 but lost 90 seats and were placed in a minority of about 100. Even then, they obtained 24 seats more than their true quota and the Liberals got 24 seats less than their true quota. In the general elections of 1924, the Liberals got only 42 seats as against 108 seats which they ought to have got according to the proportion of the votes cast for them. The Conservatives got 415 seats although they had secured only 47% of the total votes. They did not deserve more than 289 seats on the basis of their backing in their country. In the general elections of 1929, the Labour Party got 36% of the total votes. They were entitled to get 224 seats but actually they got 288 seats.

It follows from the above that the British system of elections disfranchises a large number of voters. It is estimated that about 70% of the total voters are either unable to exercise any influence upon the course of events by the use of their votes or are compelled to give their support to some doctrine or policy with which they disagree. Some voters are deprived of their votes by unopposed returns. Some vote for the unsuccessful candidate hence their votes are wasted. Some do not vote for any candidate because they do not approve of any candidate. There are others who vote reluctantly for a person whose views they do not approve of but still they vote for him because he is less objectionable than the other available alternatives.

Many suggestions have been made to remedy the state of affairs. The members of the Proportional Representation Society in England advocate the system of single transferable vote as a solution of the problem. The existing single-member constituencies of England should be grouped together into larger constituencies with a minimum of three and a maximum of seven numbers. Each elector is to be given only one vote but he is to be given the right to show his preferences among the various candidates by numbering them as 1, 2, 3, etc. If the candidate of his first preference does not require his vote or he is hopelessly out of the running, his vote is to be transferred to his second preference. The same can be done with regard to the second preference and so on. What is to be assured is that the vote of no elector is wasted. It must return somebody to the legislature. The drawback of the proposed system is that it is a very complex one but it is pointed out that it is more a headache for the administration than for the voters themselves. The proposal has the great merit of ensuring a legis-



lature which reflects the mind of the country. It guarantees the electors a real choice in the election of the members to Parliament. It is also suggested that the system of cumulative vote may be adopted and thereby the evils of the majority-vote system may be avoided. Another suggestion is to adopt the restrictive vote system. However, the one drawback of the proposals is that they are all bound to result in the multiplication of political parties in the country. That is bound to affect adversely the political stability in the country. No wonder, it is rightly pointed out that the remedy is worse than the disease itself. The introduction of proportional representation in England is bound to create many problems and no wonder the Englishmen have refused to adopt this system.

A question has sometimes been asked whether the House of Commons truly represents all the classes of the people in England and the answer is usually given in the negative. According to Greaves, there is at the present time "a Division of the House that roughly corresponds with the class divisions outside. Members of the two chief parties no longer spring from the same stratum. They differ in birth, education, economic activity, wealth and in the use to which they put their leisure. And if this is so, it is hardly surprising that they should disagree fundamentally in their political philosophy, aiming at quite opposite national and international ideals...." In the House of Commons of 1931, the members held between them 691 directorships of companies of which 152 were chairmanships and of these members 165 were Conservatives. Of the 52 members of the Labour Party, 32 were trade union officials. Most of the title-holder members of the House of Commons were Conservatives. The Conservative Party represents "the man of society" and the Labour Party represents "the man in the street." It is pointed out that on the whole "the social or agricultural advantages no longer find their counterpart in the industrial or commercial fortunes for the other, and the personal ambition to possess both has ceased to weave a net of common interest among the governing and the opposition parties."

### Duration

Before the passing of the Parliament Act of 1911, the duration of the House of Commons was seven years. Sir Richard Steele supported the Septennial Act of 1716 in these words: "Ever since the Triennial Bill has been enacted, the nation has seen a series of contentions; the first year of a triennial parliament has been spent in vindictive decisions and animosities about the elections; the second session has entered into business...the third session has languished in the pursuit of what little was intended to be done in the second; and the approach of an ensuing election has terrified the members into a servile management, according as their respective principles were disposed towards the question before them in the House." However, the Act of 1911 reduced its life to five years. This does not mean that the life of the House of Commons is absolutely fixed. The convention is that if the Prime Minister asks the King to dissolve the House of

Commons, the latter has to act accordingly. Consequently, the life of the House of Commons can be cut short by a dissolution. Moreover, the life of the House of Commons has been and can be extended or reduced by an Act of Parliament. The House of Commons elected in December, 1910 was dissolved in 1918. It renewed its existence five times. Likewise, the House of Commons elected in 1935 renewed its own existence five times by Prolongation of Parliament Acts. The duration of the House of Commons is independent of the death of the King. If at the time of the death of the King, the House of Commons is already adjourned or prorogued, the same meets without any summons.

The following table gives an idea of the life of the House of Commons between 1906 and 1950:—

<i>Date of first meeting of the House of Commons</i>	<i>Date of Dissolution</i>	<i>Duration in years, months and days</i>		
		<i>Yrs.</i>	<i>Mons.</i>	<i>Days.</i>
February 13, 1906	January 10, 1910	3	11	24
February 15, 1910	November 28, 1910	0	9	13
January 31, 1911	November 25, 1918	7	9	25
February 4, 1919	October 26, 1922	3	8	22
November 20, 1922	November 16, 1923	0	11	27
January 8, 1924	October 9, 1924	0	9	1
December 25, 1924	May 10, 1929	4	5	7
June 25, 1929	August 14, 1931	2	1	29
November 3, 1931	October 25, 1935	3	11	22
November 26, 1935	June 25, 1945	9	6	20
July 21, 1945	February 2, 1950	4	6	12

### Powers of the House of Commons

The House of Commons is essentially a law-making body. The Parliament Act of 1911 lays down that all money bills must originate in the House of Commons. It is true that the money bills have to be sent to the House of Lords, but the approval of the latter is not necessary. The House of Commons has complete control over the finances of the country. As regards the ordinary laws, they may be introduced either in the House of Commons or in the House of Lords, but most of the important legislation is introduced only in the House of Commons. Moreover, if an ordinary bill is passed by the House of Commons in three consecutive sessions and a period of one year intervenes between the second reading in the first session and the third reading in the third session, the bill becomes law even if the House of Lords does not approve of the same. The result is that from the point of view of law, the House of Commons has the last word in matters of legislation.

The House of Commons exercises supervision and control over the administration of the country. According to a convention, it is the duty of the King to call the leader of the majority party to form the ministry. Most of the important members of the



Cabinet belong to the House of Commons. A convention demands that the Prime Minister must belong to the House of Commons. The ministry remains in power so long as it enjoys the confidence of the House of Commons. It has to resign if it is defeated in the House. Evidently, the Government of the country has to be carried on according to the wishes of the members of the House of Commons who are considered to be the representatives of the nation. No ministry dare ignore their wishes. Not only this, the members of the House of Commons can ask questions from the Government and thereby force the Government to explain as to why it has done a particular thing. It is the duty of the ministers to satisfy the members of the House of Commons who are the representatives and the guardians of the interest of the people. Adjournment motions can be brought in the House of Commons to discuss urgent matters of public importance. On these occasions, the acts of omission and commission of the ministers can be exposed and the grievances of the people can be ventilated. The Opposition can move a vote of no-confidence or a censure motion and thereby bring about the fall of the ministry. A cut motion on the demands for grants also enables the members of the House to examine critically the working of the various departments. As the House of Commons has control over the purse, no ministry can afford to ignore its wishes. Thus, the House of Commons sees to it that the government of the country is carried on according to its wishes.

According to Balfour, "The House (House of Commons) is not an executive body, and if it is true to be an executive body it would do its work altogether abominably. The 670 gentlemen could not do it and no delegation to Committee Rooms of forty, or fifty could do it. That is not the way the work of the world is done anywhere, if it is done effectively. No business house manages its affairs in that way; no Army and no Navy manages its affairs in that way. Those, who aspire to that ideal of popular machinery and call it democratic, confuse administration with criticism and legislation. Administration is one thing; criticism and legislation are another."

According to Prime Minister Campbell-Bannerman, "The House of Commons is acknowledged, on all hands, with certain reservations in the House of Lords, but without reservation in the writings of any high constitutional authority, as the final court in which the will of the nation is declared. What meaning does the supremacy of the House of Commons convey to the minds of the House of Lords? In the first place, it is a matter of common knowledge that its working varies according to circumstances. When their own party is in power—that is, the party to which the vast majority of the members of the House of Lords belong—they recognise without reservation, they even make what I would almost call indecent haste, to recognise this supremacy.... There is never a hint that this House is anything but a clear and faithful mirror of the settled opinions and desires of the country. No, Sir, the other House, in these circumstances, may be said to adopt

and act upon the views of the inherent authority of this House, which was expressed by Edmund Burke in these words: "The virtue, spirit and essence of the House of Commons consists in its being the express image of the nation."

Bagehot has referred to four functions of the House of Commons. According to him, "The main function of the House of Commons is one which we know quite well, though our common constitutional speech does not recognise it. The House of Commons is an electoral chamber; it is the assembly which chooses our President." This means that the person who has a majority in the House of Commons becomes the Prime Minister of England. "The second function of the House of Commons is what I may call an expressive function. It has its office to express the mind of the English people on all matters which come before it." "The third function of Parliament is what I may call the teaching function. A great and open council of considerable men cannot be placed in the middle of a society without altering that society. It ought to alter it for the better. It ought to teach the nation what it does not know." "Fourthly, the House of Commons has what may be called an informing function...that to some extent it makes us hear what otherwise we should not." "Lastly, there is the function of legislation, of which of course it would be preposterous to deny the great importance and which I can only deny to be as important as the executive management of the whole state or the political education given by Parliament to the whole nation."

According to Bernard Crick, "The function of Parliament does not (and normally should not) consist in the threat of overthrowing Governments, but in the need to put relevant facts and fancies before the electorate which does sit in judgement upon Governments. Parliament is the broker of ideas and information; the Government must carry the final risks and responsibilities and the public is the long-suffering client (who often wonders quite who is doing who a favour). If such a function is a more modest one than the stress on legislation and 'control of the Executive' still found in the text books and on the after-dinner lips of Parliamentarians, yet Parliament is less well equipped for this modern task than it was for the nineteenth century task of influencing legislation." (*The Reform of Parliament*, p. 171.)

Prime Minister Asquith emphasized in 1911 the importance of the House of Commons and the subordinate position of the House of Lords in these words: "The House of Lords has long since ceased to have any real control over policy or administration. They debate such matters, and we read their debates with interest and with profit, but their decisions are academic conclusions and have no direct bearing on the fortunes of the government of the day."

### Comparison of the House of Commons and House of Representatives

Prof. Munro compares the Lower Houses of the two great



democracies of the world in these words: "Between the House of Representatives and the House of Commons there are many analogies and contrasts. Although one is the child of the other and bears unmistakably the marks of its parentage, the difference in environment has not been without its effect upon both structure and temperament. The House of Commons is the larger body, but it makes a much poorer body, with less noise and bustle and racket on its floor. Its whole atmosphere is one of dignity and leisure. The House of Representatives, to a visitor in the gallery, seems to be rushing through its business at breakneck speed, with a large number of members in attendance but relatively few of them paying much attention to what is going on. It can all be summed up in the saying that one body is characteristically English while the other is just as characteristically American. Each has its own distinctive habits and moods." (*Governments of Europe* pp. 171-72.)

### Speaker of House of Commons

The Speaker is the most conspicuous figure in the House of Commons. Although he is called the Speaker, he rarely speaks. The office of the Speaker is as old as the House of Commons itself. He is called the Speaker because he alone has the right to speak on behalf of the House of Commons before the King. Originally, the chief function of the Speaker was to take the petitions and resolutions of the House of Commons to the King in the House of Lords. Some of the important Speakers of the House of Commons were Peter de Monfort, Sir Thomas More, Sir Edward Coke and Sir William Lenthall. Sir William was the Speaker in the reign of Charles I and it is stated that when Charles I entered the House of Commons and demanded from him as to where the five members of House of Commons were, Sir William replied thus: "May it please your Majesty, I have neither eyes to see nor tongue to speak in this place save as this House is pleased to direct me."

To begin with, a Speaker is elected on party lines. What actually happens is that the Prime Minister makes a choice of the Speaker in consultation with the members of the cabinet. He also assures himself that his choice has the general approval of the House. Then the nomination of Speaker is made and seconded by two private members. This is done with a view to emphasise the fact that the choice of the Speaker is that of the whole House and not only those of the ministers. Although the Speaker is elected on party lines, he becomes a no-party man after his election. He becomes an impartial and unattached custodian of the rules and rulings and proceedings and privileges of the House of Commons. The result is that at the time of the next election, he is returned unopposed. His constituency sends him back to Parliament as long as he chooses to remain the Speaker. In 1895, Mr. A. J. Balfour threatened to destroy the tradition in the case of Mr. Gully but the threat was not carried out when the Conservatives returned with a majority. In 1935, the Labour Party

tried to violate the convention but its efforts failed on account of the support given by the Conservative Party and the Liberal Party to the Speaker. However, it cannot be denied that the constituency from which a Speaker is returned becomes practically disfranchised. No wonder, a suggestion is made that the Speaker should be given a fictitious constituency. However, the suggestion has not been accepted.

As regards the qualifications of a Speaker, he should not be a prominent member of any party. It is best if *he is one who "knows nothing and whom nobody knows."* According to Gladstone, "It would not be wise or allowable to propose any candidate from the Treasury Benches, upon these grounds especially that it would be difficult at any rate, at present, to relieve any such person from the suspicion of partiality; that precedent does not run in this direction: and that a resort to a measure in critical times would not be when a tendency to lower the dignity of the chair by giving rise to a suspicion that the disposal of it has been made use to serve the purpose of the Government." Again, "a great desire had been expressed on both sides of the House that Mr. Campbell-Bannerman who is universally popular should be nominated but the Cabinet felt that there were great objections on principle to taking a principal member of their own body and placing him in the chair, thus making the Speakership a purely party appointment, a practice which has had such an evil result in the United States." According to Lord Rosebury, "There is much exaggeration about the attainments required for a Speaker. All Speakers are highly successful, all Speakers are deeply regretted and are generally announced to be irreplaceable. But a Speaker is soon found and found out invariably, among the mediocrities of the House."

The Speaker gets a liberal salary of £5000 a year. He has an official residence in Westminster Place. When he retires he gets a pension and is also made a peer. However, the Speaker might accept with his office a sentence of exile from politics.

### **Powers of the Speaker**

According to Dr. Jennings, "It is impossible, however, to indicate by an enumeration of powers and immunities the prestige which the Speaker enjoys. Psychological influences can never be adequately explained in writing. Expressed rules, long customs, ancient ceremonies and deliberate policies combined together make an actual authority which none of these alone could confer. Traditions and deliberations combine to confer on the person who sits in the chair a dignity and authority which could not be surpassed."

The Speaker presides over the meetings of the House of Commons and as such it is his duty to maintain discipline in that House. Whenever many members want to speak, it is the Speaker who decides as to who should speak first. Whenever a member raises a point of order, the Speaker has to give his own ruling.



However, the rulings of the Speaker are given according to precedent. As there are a very large number of precedents on practically every point not much discretion is left in the hands of the Speaker. Whenever a ruling is given by the Speaker, that is final and the same cannot be questioned by any member. It is rightly stated that the Speaker is expected to act with the impartiality of a Chief Justice.

Ordinarily, the Speaker does not vote. Even when he is called upon to give a casting vote in case of a tie, he does not act according to his own personal opinion. He acts according to certain well-established principles. If his negative vote would determine the defeat of a measure while his affirmative vote would prolong its consideration, the Speaker always votes in the affirmative. If a tie comes on a proposal to adjourn the debate, he always votes against it. If the Speaker is doubtful on any question of order of privilege, he enquires of the Clerk of the House of Commons. However, the Speaker is rarely called upon to give his casting vote.

The Parliament Act of 1911 has given the Speaker of England some powers. It is provided that a money bill is that bill which is certified to be a money bill by the Speaker. Moreover, if a bill has been passed by the House of Commons in three consecutive sessions and becomes law without the approval of the House of Lords it is for the Speaker to recommend as to what changes are necessary in the original bill on account of lapse of time. The Speaker is an honourable person and he is bound to act in an impartial manner unmindful of his views on any party.

The Speaker is an impartial custodian of the rights and privileges of the members of the House of Commons. In his eyes, the humblest back-bencher and the greatest minister stand on the same footing. According to Briers, "It is Mr. Speaker's function to safeguard the privileges and rights of the Members of the Commons not only against the Crown and Lords, but as between each other, to the end that the whole basis of Parliament, as a forum in which the elected representatives of the people speak their minds and say what they think popular or unpopular—should be reserved. The Speaker's conduct, in fact, reflects the spirit which is ultimately more important than the forms of government. In some measures he is responsible for the continued existence of the House of Commons, for it will survive only so long as its procedure and facilities are adequate for the functions it has to perform; and the adjustment of established procedure to novel conditions is the Speaker's task."

According to Roland Young, "The part played by the Speaker in the deliberations of the House of Commons extends beyond that of a moderator or presiding officer, and although the Speaker presides in the sense that he keeps order during debates, he also has considerable authority in shaping the form of the deliberations. He sees to it that time is allocated fairly, that the debate is relevant, and that waggish and assertive Members are duly admonished. On some occasions he is the conscience of the House,

making certain that the rights of Members and of the House of Commons are respected. He is not the kind of chairman who leads the discussion so as to produce a meeting of minds of the Members. Rather, his function is to see to it that the process itself is working without his influencing the decision.

"The Speaker has considerable, almost unlimited, authority within a narrow jurisdiction. He is answerable only to the House for his actions, and although his decision can be overruled, this seldom happens. He has the power to permit Members to speak and he has some discretion in selecting topics and amendments for discussion and in permitting divisions. He sees to it that there is adequate discussion before a decision is made and that the essence of the proposal has been discussed with fair play all around. The most important guide line for the Speaker is 'the sense of the House', and the ability to interpret this particular mystery is acquired from association and experience, not from written rules. It is not too far wide of the mark to say that the Speaker has to ascertain the sense of the House for every debate, knowing what issues and interests are involved and the possible contribution of the various Members."

It is desirable in this connection to compare the Speaker of England with the Speaker of the House of Representatives in the U.S.A. It is to be noted that the American Speaker is not only elected on party lines, but continues to remain a party man even after his election. He participates in the proceedings of the House and on account of the absence of the executive from Congress, he is virtually the leader and the spokesman of his party in the House of Representatives. No wonder, the American Speaker is considered to be a partisan and elections for speakership are hotly contested. The question of returning the Speaker unopposed to the House of Representatives does not arise. The American Speaker does not enjoy the same respect and prestige as his opposite number does in England. Although some of the powers of the American Speaker have been taken away, still he is considered to be a big gun in the House of Representatives.

### **Control of House of Commons over Finance**

The House of Commons has four-fold control over finance. It determines the taxes. It makes appropriations. It scrutinises accounts. It criticises the manner in which the national funds are to be spent.

The work of the House of Commons with regard to finance begins after the presentation of the budget by the government towards the end of February or early in March every year. The budget is prepared by the treasury in consultation with and on the basis of estimates supplied by the various departments of the government. It is discussed in the cabinet before it is presented in House of Commons. On presentation, the House of Commons resolves itself into a Committee of the Whole House "in Supply" (Committee of Supply) to discuss the estimates of expenditure and



into a Committee of the Whole House 'in Ways and Means' (Committee of Ways and Means) discuss proposals for raising funds. Since 1921, an Estimates Committee, now of 28 members, has also been appointed annually, to examine such of the Estimates presented to the House as may seem fit to the Committee and to suggest the form in which the Estimates shall be presented for examination, and to report what, if any, economies consistent with the policy employed in those Estimates may be affected therein. The resolutions of the Committees of Supply and Ways and Means are reported to the House of Commons. On the basis of these resolutions, the Appropriation Act and the Finance Act are passed by the House of Commons authorising expenditure and taxation respectively. Every payment of money has further to be authorised by the Comptroller and Auditor-General. Finally, a committee of the House of Commons called the Committee of Public Accounts, scrutinises the annual accounts and makes a report to the House. In order that its work may be effective, this committee is usually presided over by a leading member of the Opposition. The question time in the House of Commons and the debates on the budget provide opportunities to criticise the manner in which the money is spent by the government.

As normally the Appropriation Act is passed about the end of July every year although the financial year starts from the first of April, the necessary permission for expenditure during the four months is granted by 'votes on account'. Some items of expenditure such as the interest on the national debt, the royal civil list and the salaries of the judges do not require an annual vote of Parliament. Those are charged on the Consolidated Fund. The House of Commons does not make appropriations except at the request of the Crown. To quote May, "The Crown demands money, the Commons grant it, and the Lords assent to the grant: but the Commons do not vote money unless it is required by the Crown". In other words all proposals for expenditure of public money must come from a minister of the Crown. Private members do not have an hand in this matter. All that they can do is to propose a reduction and not an increase. To quote May again, "The principle that the sanction of the Crown must be given to every grant of money drawn from the public revenue applies equally to the taxation levied to provide revenue. No motion can, therefore, be made to impose a tax say by a minister of the Crown, unless such a tax be in substitution, by way of equivalent, for taxation at that moment submitted to the consideration of Parliament; nor can the amount of a tax proposed on behalf of the Crown be augmented nor any alteration made in the area of imposition. In like manner, no increase can be considered either of an existing or of new or temporary tax for the service of the year, except on the initiative of a minister, acting on behalf of the Crown."

It is clear from the above that the House of Commons controls the raising of funds through discussion in the Committee of Ways

and Means and the Finance Act. It controls the appropriation of money through discussion in the Committee of Supply, the Appropriation Act and the authorisation by the Comptroller and Auditor-General who is responsible to Parliament. The scrutiny of accounts is done through the Committee on Public Accounts. The House of Commons criticises the manner in which money is spent through questions and debates. The great merit of the British financial procedure is that it guarantees a financial programme which has been prepared as a unit and for which full responsibility is taken by the cabinet. The rule that all proposals for taxation and expenditure must originate from the Crown prevents the undue influence of localism in appropriations. The fact that proposals for income and expenditure are considered by the same body of persons sitting in two different capacities, helps to link up income with expenditure. Moreover, ministers have the opportunity to defend their proposals on the floor of the House of Commons. However, it is pointed out that the control of the House of Commons over finance is not effective. The Committees of the Whole House are very large and the time is not enough to discuss the estimates effectively. The details of the budget are so complicated that they are beyond the comprehension of an average member. Party solidarity and the power of the ministry to get the House of Commons dissolved render the power of the House of Commons illusory. The indifference of the individual member to financial questions makes the control of the House of Commons a farce. To quote Sidney Low, "Who is not familiar with the farce of a debate on the Army or the Navy in committee? The bulk of the House—busy, fatigued, bored and idle—is not at dinner, or on the terrace, or in the smoking room; its members will come and vote if required but otherwise will know no more of the debate than the newspaper-readers but will glance languidly the next morning over the array of unintelligible figures and obscured technicalities."

### **Her Majesty's Opposition**

A reference may be made in this connection to Her Majesty's Opposition in the House of Commons. Her Majesty's Opposition is an essential part of the Government. It is Her Majesty's alternative government. Only a small change in the vote in the next election is sufficient to compel the Government and Opposition to change places. The Leader of the Opposition is given a salary out of the public funds so that he may be able to perform his duties satisfactorily. So great is his dread that it is stated that the Prime Minister of England knows more about the Leader of the Opposition than he knows about his wife.

The Government has a majority and consequently is in power but the same has to be exercised under constant criticism from the Opposition. What the Opposition says may be so persuasive that the floating vote may swing the pendulum. Ministers have to meet arguments by arguments for fear of losing the confidence of the people. The criticism of the Opposition exposes the Gov-



ernment and consequently forces it to follow a policy which is in the best interests of the country.

It is not the business of the Opposition to obstruct government. Its purpose is to criticise and not to hinder. Obstructions can be permissible only under very exceptional circumstances. When a Government is forcing a policy on the country which it is reasonably certain that the country does not approve, the Opposition can reasonably demand that the same be submitted to the people.

Her Majesty's Opposition is guided by a "Shadow Cabinet," composed of persons who are likely to hold office when their party comes to have a majority in the House of Commons and forms the Government. Lord Randolph Churchill once declared, "The function of an Opposition is to oppose and not to support, the Government." The conduct of the Opposition differs widely under different circumstances. There have been many occasions when the gap between the Government and Opposition has seemed to be very small and there have been others when deep emotions of mutual distrust and animosity have poisoned the atmosphere of the House of Commons. A good Opposition is alert and critical of the Government, but not merely hostile for the sake of hostility.

It goes without saying that sometimes the Opposition delays the work of the Government. It is stated that between 1st and 7th September, 1939, British Parliament passed enough legislation to occupy two or three sessions as the Opposition did not offer any opposition. In times of war the Government expects and gets the power to legislate by Orders-in-Council so that the Opposition does not hinder the work of the Government. But it cannot be the normal course of Government. A democratic Government can work effectively and in the best interests of the people if its actions are opposed and criticised in the legislature. The criticism of the Opposition may embarrass the Government and negotiations with foreign powers may not be conducted easily when lynx-eyed Opposition sits suspiciously on the watch but there is no other way to safeguard the interests of the people. The Opposition is the spearhead of the attack on the Government. The Opposition represents the views of those who differ from the Government. Its criticism is that of the ordinary individual. According to Jennings, *"To find out whether a people is free it is necessary only to ask if there is an opposition, and if there is, to ask where it is."*

According to Lord Campion, "The 'Official Opposition' is a standing proof to the British genius for inventing political machinery. It has been adopted in all the Dominion Parliaments; the lack of it is the chief weakness of most of the Continental systems. It derives, of course, from the two-Party system; but in its developed form it represents a happy fusion of the parliamentary spirit of toleration with the democratic tendency to exalt party organization. The system involves the discouragement of individual initiative almost as much on the Opposition back benches as on those of the Government Party, for party organization seems more

adapted to frontal attack in mass formation than to individual sniping. While admitting the loss to parliamentary life resulting from the sacrifice of the independent private Member, it cannot be denied that under modern conditions the concerted action of the Opposition is the best means of controlling a Government by criticizing defects in administration loudly enough for the public to take notice".

### Importance of Law-making

The beauty of the process of law-making in England has been described thus by Sir A. Helps: "You chuckled over those people who could see beauty only in pictures, but you cannot imagine the beauty of an intricate, mazy law process, embodying the doubts and subtleties of generations of men. I say, looked at in that way there is something picturesque in an Act of Parliament." According to Rousseau, "The universal spirit of the laws of all countries is to put always the strong against the weak and him who has against him who has nothing. The disadvantage is inevitable and it is without exception." According to Macklin, "The law is a hocuspocus science that smiles in year face while it picks yer pocket; and the glorious uncertainty of it is mair use to the professors than the justice of it." Butler gives his opinion of law in these words:—

"Law does not put the least restraint  
Upon our freedom, but maintain't  
For wholesome laws preserve us free  
By stinting of our liberty."

According to Burnet, "The law of England is the greatest grievance of the nation, very expensive and dilatory." There may be shortcomings in the existing system of law-making in a country but it cannot be denied that laws are absolutely necessary for regulating the lives of the people of the country and their progress and prosperity.

### Process of Law-making

There is a special procedure for the passing of laws in England. Broadly speaking, bills can be divided into two categories: public and private bills. A public bill is "one which affects the general interest and ostensibly concerns the whole people, or at any rate, a large portion of them." On the other hand, a private bill relates to "the interest of some one locality or corporation, municipality or their particular person or body of persons." According to Ilbert, "The object of a private bill is not to alter the general law of the country, but to alter the law relating to some particular locality, or to confer rights on or relieve from liability some particular person or persons." A public bill may be introduced by the Government and comes to be known as a government Bill. Government bills are of two kinds: ordinary public bills and money bills. A public bill when introduced by a private member of parliament, is known as Private Member Public Bill.



The procedure for the passing of private bills is essentially different from that for the public bills.

### Government Bills

As regards a Government bill, the same can be introduced either in the House of Commons or in the House of Lords. Irrespective of the House in which it is introduced, it has to be approved of by both the Houses. There are five stages in either House. The first stage is introduction and first reading. The sponsor of the Bill can follow any of the two courses. He can give notice of introduction which is printed in the Orders of the Day and then present the Bill at the table of the House when the Clerk of the House reads its title aloud. The second course is to move for leave to introduce the bill when after brief speeches by the mover and one opposer, the Speaker puts the motion to vote. As a rule, the first course is adopted. When the bill has thus been introduced, there is the first reading of the bill without debate or discussion. A date is fixed for second reading and the bill is ordered to be printed.

At the second reading of the bill, only its fundamental principles are discussed and voted upon. There is no debate on the individual clauses of the bill. If the Opposition decides to measure strength with the ministry, it can move that the bill be given its second reading "this day six months." This is equivalent to an indefinite postponement of the bill. The Opposition can also move a resolution which is hostile to the bill under discussion. After the end of the second reading, there is a voting on the bill. If the bill introduced by the Government is defeated, the ministry has to resign. Generally, there is no such danger as the ministry has a majority in the House of Commons.

After the approval of the principles of the bill, the bill goes to the Committee stage. There are many committees for public bills and the bill is sent to the appropriate committee. In exceptional cases, a public bill may be sent to a select committee. According to Lowell, "Such a reference simply adds a step to the journey of the bill; for when reported, it goes to a standing committee or to the Committee of the Whole." The House may refer a bill to the Committee of the Whole, but this is not done generally. In the committee stage the bill is thoroughly examined clause by clause. Amendments are moved and sometimes new clauses added. In the case of Government bills, usually a minister is in charge of the bill. He can see to it that only those changes are made in the bill which are in keeping with the principles of the bill and also acceptable to the Government. On account of the Government majority in the Committee, it need not accept any amendment which goes against the object of the bill itself.

The next stage is the report stage. There is no report stage if the bill is reported from the Committee of the Whole without amendments. However, this is a rare phenomenon. Ordinarily, the Chairman of the Committee presents the report. Amendments



are debated upon and alternative amendments can be made unless a bill is very urgently required to be passed or is non-controversial.

After the report stage comes the third reading of the bill. It is a formal stage. Nothing but mere verbal amendments can be made at this stage. The House must either accept or reject the bill as it stands. However, rejection of the bill at this stage is not likely.

When a bill has passed through the above five stages in one House, it is sent to the other House and it has to pass through the same stages in that House also. When that is done, the bill is sent to the King for his formal approval. The convention is that the King will not use his veto power.

The question arises as to what procedure should be followed if the two Houses differ and refuse to pass the bill. The Parliament Act of 1911 as amended in 1949 provides that if a bill is passed by the House of Commons in three consecutive sessions and one year intervenes between the second reading in the first session and the third reading in the third session, the bill is considered to be passed even if the House of Lords does not approve of the same.

### Money Bills

There is a special procedure for the passing of money bills. The Parliament Act of 1911 defines money bill as a public bill which, in the judgment of the Speaker of the House of Commons, contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition, for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them."

There are certain principles concerning money bills (1) "It has become a fundamental principle of sound public finance with the English Government that all taxation and expenditure are at first placed before the Commons and when approved of by the House consisting of the representatives of the people are enforced for the benefit of the country." (2) The House of Commons cannot vote money for any purpose nor can impose a tax except at the demand and on the responsibility of the minister of the Crown. (3) The House of Commons has complete control over the purse. Money bills can originate only in the House of Commons. According to the Parliament Act of 1911, if a money bill has been passed by the House of Commons and sent to the House of Lords one month before the ending of the session, it is considered to have been passed even if the House of Lords does not approve of the same or proposes amendments. The role of the House of Lords in the matter of money bills is merely a formal one. It has absolutely



no control at all. The money bill has to be passed in the same form in which it comes from the House of Commons.

### Private Member Public Bills

The procedure for the passing of public bills introduced by private members of Parliament is a little different. What actually happens is that before the beginning of a session of Parliament, private members send a large number of bills to be introduced in Parliament. Before the session, lists of those bills are prepared and then a kind of lottery system is adopted. A list is prepared giving the order in which the bills can be introduced in Parliament and are actually introduced in the same order.

There is no great handicap in the way of the bills introduced by private members. Most of the time of Parliament is occupied by the legislation introduced by the government. Only a little time is allotted for the discussion of private member public bills. That time is not enough even for a few bills and the rest of them cannot be introduced at all. The rest of the list is cancelled and a new one has to be prepared for the next session.

According to Masterman, "If a member is lucky in this lottery and can introduce a bill which is generally popular and which neither the ministers nor any of his fellow members dislike, and if he possesses the art of appeasing opposition, he may manage adroitly to steer his bill through a parliamentary session." It is to be noted that the procedure for the passing of the private member public bills is the same as in the case of Government bills. However, there is a great mortality of these bills in the second reading.

### Private Bills

A large number of private bills are passed every year in England. Most of them are introduced by local bodies asking for special powers. These bills are presented in the form of petitions with the bills attached. First of all, these bills must go to Examiners of Petitions for Private Bills. Every petition for a private bill must be preceded by certain published notices so that the interested parties may come to have knowledge of the coming legislation. Copies of the proposed bills have to be sent in advance to departments of the Government concerned. The examiners have to see that notices have been duly published and copies sent. If the formalities have been duly observed, they certify the bill and the bill can be presented in either House of Parliament. If the formalities have not been complied with the Examiners report to the Committees on Standing Orders appointed by the two Houses of Parliament. It is for the latter to decide whether the omissions can be overlooked or not.

After a private bill is introduced in either House of Parliament, it is read the first time and second time. If after the second reading there is no opposition, the bill is referred to a committee on unopposed bills. If there is opposition, the bill is sent to a private bill committee. The members of the committee have to de-



clare that they have no personal interest in the bill. The number of private bill committees depends upon the number of private bills and very often a large number of these bills are sent to one committee.

There is a thorough examination of the private bills in the Committee and all the interested parties are allowed to present their points of view. Lawyers are engaged and witnesses are examined. Reports from the Government departments are considered. When all this has been done, the private bill committee reports on the bill, whether favourably or unfavourably. The report of the committee is almost invariably accepted. Nobody doubts the wisdom of the work done by the committee. After that, a private bill is passed in the same way as any other public bill.

According to Prof. Munro, the system of passing private bills in England has certain merits. It ensures the careful, non-partisan consideration of measures which form their nature, ought not to be dealt with in a partisan spirit. It saves the time of the House by reducing its action on local measures to a series of formalities. The procedure rests upon the commonsense principle that the time of several hundred legislators should not be consumed, hour after hour in discussing whether the borough of Battersea should have some additional powers or the Liverpool Tramways Company build tracks outside the city. In Congress, where public and private bills are dealt with in the same way, there is a terrific congestion of business. Measures which are in effect private bills come before it by thousands. They are brought in by individual members. No matter how trivial their importance, they are in all cases referred to some committee which may have many important bills of nationwide interest to consider. The result is that most of the minor bills obtain very little consideration, and unless some influential members of Congress get behind them they are asphyxiated in Committee. Many of them, no doubt, deserve this fate but it is not always the most meritorious that survive. The merits of an unimportant measure in Congress have little to do with its success in getting a favourable committee report. The main thing is the amount of influence behind it.

Would it not be better for Congress to discard the fiction that all bills are created free and equal—to accept frankly, as Parliament has done, the principle that many measures are of purely local importance, and to provide that all such bills be dealt with by small, disinterested committees in a wholly non-partisan way? “The curse of most representative bodies,” says President Lowell, “is the tendency of members to urge the interests of their localities or constituents. It is this more than anything else which has brought legislatures into discredit and has made them appear to be concerned with a tangled skein of private interests rather than with the public welfare. . . . Now the very essence of English system lies in the fact that it tends to remove private and local bills from the general field of political discussion and this helps to rivet the attention of parliament upon public matters.”



On the other hand, the English procedure of private bills has the serious defect of being expensive. Many witnesses must sometimes be brought to London. Fees are charged for the introduction of a private bill and again at various stages in its progress through parliament. It also becomes necessary, when the bill is opposed, to employ parliamentary counsel or agents who exact substantial retainers. These parliamentary agents are professional law promoters; they are specialists in their work, and almost without exception they are lawyers of high standing. But any person may become a parliamentary agent by registering as such and filling a bond. London has lots of them, and the best ones charge high fees for their services. They are not lobbyists in the American sense; their business is not to roam the corridors buttonholing members. They merely supervise the drafting of a private bill; see that the required notices are given, present the evidence to the committees, and make their arguments. (*Governments of Europe*, pp. 183-84.)

### Provisional Orders

Reference may be made to what are known as Provisional Orders. The necessity of issuing provisional orders has arisen on account of the fact that the procedure of private bills is a very expensive one. The orders are issued by a department of the Central Government and become effective either automatically or when confirmed by Parliament. Strictly speaking, there are about six classes of orders issued by the Government. In the first place, orders may be issued by a central Department and they become effective as soon as they are issued and do not require any reference to Parliament. Secondly, some orders become effective as soon as they are made but have to be laid before Parliament. In the third place, some orders have to be laid before both Houses of Parliament for 40 days before they become effective. During this interval, they can be objected to in either House. Fourthly, certain orders do not become effective unless they are confirmed by a resolution of both Houses. In the fifth place, certain orders become effective unless some authorised outside body objects. Sixthly, certain orders are provisional in every case, whether any objection is raised or not. They do not become effective until they have been embodied in a Provisional Orders Confirmation Act and passed by Parliament.

Many general laws passed by Parliament authorise the various Governments to grant certain powers to corporations and municipalities. The result is that when a new power is desired by some municipality, corporation or individual, an application is made to the department concerned. Then the department enquires into the merits of the application. If it comes to the conclusion that the permission should be given, an order is issued conferring the power desired. This order may be a provisional order and requires to be confirmed by Parliament. The usual practice is to group together a large number of provisional orders into a confirmation bill and put the same before Parliament for enactment



into law. Ordinarily, there is no opposition to these confirmation bills. However, if there is opposition, the bills are referred to a Select Committee. The rest of the procedure is the same as that adopted in the case of private bills. The great merit of the system is that it is less expensive and it also relieves Parliament of a heavy burden upon its time and attention. No wonder, the system is getting popular.

### Comparison of American and British Procedure

It may be instructive to compare the procedure of law-making in England and in the U.S.A. Although they seem to be fundamentally alike, there are many differences between the two systems. It is to be noted that in the U.S.A., there is no distinction between private bills and public bills or between a Government bill and a private member's bill. All bills are introduced in the American Congress by private members. Some measures may have the backing of the President or some department of the Government, but it does not make much difference. Even when a measure is urgently and essentially desired by the executive, there is no guarantee that it will be passed by the American Congress. There have been many occasions when the Congress has refused to oblige the executive by passing the desired legislation. However, that is not the case in England. Most of the important legislation is moved by the ministry and the latter is absolutely sure that it will be enacted into law. The ministry has a majority in the House of Commons and it can see to it that the bill is passed in the form desired by it. If the House of Commons refuses to pass the legislation initiated by the ministry, the latter can demand a dissolution. There is no such danger in the case of the U.S.A., where the Congressmen can flout the wishes of the executive without any harm being done to them.

In the U.S.A., the Chairmen of the Committees play an important part. Measures of great importance are usually introduced by the Chairmen of the Committees and they come to be known by the name of the Chairman. That is why the Americans refer to the Sherman Law, the Adamson Law, the Mann Law, etc. To a great extent, the Chairmen of the Committees in the U.S.A. exercise the same amount of initiative and guidance which the ministers do in England. In the British Parliament, the initiative in legislation rests with the Government and some minister is in charge of the bill throughout all the stages. The Chairmen of the Committees do not play any important part. They do not get the same prominence or publicity which is given to the Chairmen of the important committees in the American Congress. The Chairmen in England are over-shadowed by ministers. They are also considered to be absolutely impartial. Although they preside over the meetings of the committees, yet they do not take sides. In the case of the U.S.A., the Chairman of a Congressional Committee has power in the committee and also dominates the same. He does not hesitate to take sides. Moreover, there is a great competition in the U.S.A. to become the Chairman of a Committee



but that is not so in England. Particularly in the case of private bill committees, every effort is made to avoid service on the same and sometimes compulsion has to be used for that purpose.

In England, bills are referred to committees after their fundamental principles have been approved of by the House of Commons or the House of Lords. The committee stage comes after the second reading. The result is that the members of the Committees know that the bill before them will be ultimately passed and their labours will not be wasted. However, that is not the case in the U.S.A., where the bills are referred to committees before there is any discussion on the general principles. The result is that there is every possibility of all the labours of the committee being wasted if ultimately Congress decides not to approve of its general principles. An American committee will not be able to perfect the details of a bill on account of uncertainty with regard to the final outcome of the bill. The English system is decidedly better.

In England, there is a regular time for asking questions and replying to them. All information from the various departments can be got at that time. However, in the U.S.A., when a Congressman desires information from any department, he telephones or writes for it. If he does get the same, he can offer a resolution requesting for it. He is not allowed to waste the time of the Congress by pelting questions at the administration. The executive cannot be questioned on the floor because nobody represents it in Congress.

In the U.S.A., there is a custom which does not exist in England. By that custom, a member can be requested to yield the floor when he is in the middle of his speech. In this way, a debate of a general question is turned into a personal debate. The result is that the continuity of debate cannot be preserved.

There is another practice in the U.S.A. which is not to be found in England. In England, all speeches are delivered by the members of Parliament. However, in the American Congress, many undelivered speeches are also printed. What happens is that a Congressman speaks for a few minutes and then moves that he be allowed to "extend his remarks" in print. Ordinarily, there is no objection to such a procedure. It is considered to be easier to print the speech than to hear the same. Sometimes, the whole of the speech is printed in the Congressional record even if no part of it has been delivered in the Congress. It is in this way that the Congressmen in America can boast of having delivered perfect speeches in Congress.

#### **Closure, Closure by Compartments, Kangaroo Closure, Guillotine and Time-Table.**

Certain devices are adopted in Parliament to save its time. One of them is the Closure. While a member is speaking on a subject, another member may move "the previous question." This



means the immediate dropping of the question under discussion and the taking up of the consideration of the previous question. The object is not to discuss any previous question but to end the discussion on the subject under debate. Unless the Speaker thinks that an immediate vote in the matter will be harmful to the ministry the motion is put to vote at once and the debate is thereby closed.

The closure by compartments is an improvement on simple closure. The closure had to be applied after every clause and consequently a lot of time was wasted at every stage. Consequently, the practice was started of applying the closure or putting the previous question to a whole group of clauses. Accordingly, a member can move that clauses 17 to 24 "stand part of the bill". If the Speaker approves of it and the majority agrees the debate on those clauses comes to an end. This is called Closure by Compartments.

Kangaroo Closure is a form of Closure by Compartments. It is an arrangement which permits the Speaker and the Chairman of the Committee of the Whole House on Ways and Means to select amendment for discussion out of those which appear on the order paper and pass over the rules. The Chairman of a Standing Committee does not possess this power. In the hands of an impartial Speaker or Chairman, it is a useful method for expediting the work of the House.

Another method of cutting short lengthy debates is to put a time limit for the consideration of the various clauses of the bill. When the time allowed is over, the Guillotine falls and the debate comes to an end whether all the clauses have been discussed or not. The Guillotine is an apparatus by which the head can be cut off by a certain fall of the upper plank of a structure having a sharp blade in the middle. The fall of the Guillotine indicates the cutting of the thread of the debate.

As the procedure of Guillotine is not frequently used, the practice adopted is to make a time-table when an important controversial measure comes up. The minister in charge of the bill requests the House to approve of the resolution allotting a given number of days to the second reading, to the committee stage, to the report stage, etc. The time-table may even assign specified hours to the individual clauses of a bill. This procedure gives an opportunity to the supporters and opponents of the bill to express their opinions within the time-table. It not only expedites business but also safeguards against hasty and ill-considered legislation. However, this does not leave much scope for oratory on the part of the members.

### **Committee System in England**

According to Roland Young, "The development of a committee system for Parliament, with bi-partisan membership, presents something of an intellectual quandary. If parliamentary government is identified exclusively with ministerial responsibility, the



final decision on all subjects is placed with the Government; but if it is considered that Parliament is a balance to the Government, able to criticise, revise, initiate, and investigate, then Parliament requires some independent means for carrying out its functions, and the committee system can serve a useful purpose in this regard. This quandary is not unique for Parliament and is inherent in any system of control: the controlling unit requires some independent source of power but not so much that it is always the master. In the parliamentary system, Parliament supports the Government, yet it requires some measure of independence so that its criticisms may be effective. This duality of roles—of support on the one hand and criticism on the other—had to some extent been resolved by the development of the party system, wherein one party has a propensity to support, the other to oppose. However, there are other types of balances at work also, and one may distinguish the work of the various committees."

Committee system plays a very important part in the field of legislation. The work of the Government has increased to such an extent that it is impossible for the whole of the House of Commons or the House of Lords to dispose of the same. If all bills have to be put before the full session of Parliament, there is no possibility of the Government having an opportunity to get all the desired legislation enacted. It is an impossible task even if Parliament meets throughout the year without any break and also lengthens its hours of business. Moreover, if a House consisting of more than six hundred members sits, the atmosphere is such that no deliberation can take place. However, if a few persons sit in a committee, they can discuss the merits and demerits of the measure in a much better atmosphere. More work can be done if all the members of the House of Commons and House of Lords are divided into a large number of committees to whom bills are referred for examination. A lot of time of Parliament can be saved if the bills can be critically examined by the appropriate committees. The Rules of Procedure in the House of Commons do not allow the members to make their contribution effectively to the bill under discussion. It is for the Speaker to decide as to who is to speak. Sometimes a speech lasts for hours or days and there is no proper criticism because the Members of Parliament might have forgotten what was said by the Speaker before. As the speeches are made in Parliament in public, the Government is not in a mood to accept the point of view of the Opposition even if there is a lot of wisdom in it. The Government is not prepared to show to the world that while the measures introduced by it are foolish and defective, the Opposition has more wisdom to correct them. Such is not the case in a committee whose meetings are held in camera. The Government is willing to accept the point of view of the Opposition if the same is not hostile to the object of the bill itself. The result is that the society gains out of the compromise between the opposite points of view.

As regards the organisation of committees, they are of five kinds. The Standing Committees on Public Bills are five in num-

ber. One of them deals with Scottish affairs. These committees are appointed at the beginning of every session by the Committees of Selection and last till the end of the session. The maximum number of members to a Standing Committee is fifty and the minimum number thirty. These Standing Committees have the power to co-opt fifteen or twenty-five additional members who are experts on the subject under consideration. Only those bills are referred to a Standing Committee which belong to its field of jurisdiction. The Committee of Selection nominates a panel of Chairmen who appoint the Chairmen of the Standing Committees from among themselves. Ordinarily, the supporters of the Government are appointed by the Chairmen of the Standing Committees.

Select Committees are appointed to consider and report on the particular measures referred to them by the House of Commons or the House of Lords. They come to an end after the submission of their reports. Ordinarily, a Select Committee consists of about fifteen members. Its members are chosen by the Committee of Selection.

Select Committees can be conveniently divided into three types, those appointed by the House to examine specific matters which arise in the course of the session, those set up by Standing Order such as the Public Accounts and the Estimates Committees and those normally set up at the beginning of each session, of which the Selection and Kitchen Committees are examples. The House gives each Committee its terms of reference and appoints its members.

Select Committees are noticeable for their impartiality and friendliness. It is rare for divisions to be taken on party lines. It is most unusual to have any heated discussions. Select Committees travel to take evidence and inspect Government Departments. These journeys help to increase the friendliness and non-partisanship which are of the greatest importance in detailed inquiries of this kind.

The Committee of Privileges is appointed by the House at the beginning of each Session. It usually consists of 10 senior Members of the House including the Leader of the House who usually acts as Chairman, the Leader of the Opposition and one of the Law Officers, either the Attorney-General or the Solicitor-General. It only meets when specific complaints of breach of privilege are referred to it by the House.

The Committee of Public Accounts was first set up in 1861. It is one of the most active and responsible committees which serve the House. Its principal task is to see that the money voted by Parliament has been spent in accordance with its wishes. The Comptroller and Auditor-General assists the Committee. It is usually as a result of his reports that the Committee inquires into specific matters.

The Estimates Committee concentrates upon current expenditure. The Committee was first set up in 1912, but it was only



since the last War that it has assumed real importance. At the moment, the Committee consists of 43 Members and these are divided into sub-committees, each of which takes a particular aspect of Government expenditure and inquires into it. The result of the excellent work which the Committee has done in recent years is that it has been increased in size and in its terms of reference. It has emerged from a position of relative obscurity to one of influence in the control of public money by the House of Commons. It can only recommend certain economies but these recommendations can carry great weight with Ministers and departments, who are obliged to reply to them and these replies are published. Although the Committee is not very popular with certain Ministries, it has great importance, if only as 'nuisance value', to keep officials on their toes. The officials who live with complicated problems of administration tend to become so obsessed with the details that they lose sight of fundamental facts which immediately strike a Committee of laymen examining the problem with a fresh mind. The Estimates Committee can draw the attention of Government Departments to weaknesses in their organisations which can cause a waste of public money.

The Committee on Nationalised Industries is a very recent creation. Its task is to look at the financial state of health of the nationalised industries and make observations on them. This is one of the few ways in which the House of Commons can keep a check on these industries since there is no Minister who can answer from the day to day management of these enormous concerns.

Many Acts of Parliament give powers to Ministers which they can exercise by means of Statutory Instruments, which in effect are regulations. The function of the Committee on Statutory Instruments is to scrutinise those Instruments which are subject to proceedings in either House and to report to the House on any exceptional matter which they discover.

The Kitchen Committee was appointed for the first time in 1848. Its duties are confined to the management of the refreshment rooms of the House. It is unique in the sense that it can actually do things rather than merely make recommendations. It consists of 13 Members.

Sessional Committees are appointed for a single session to deal with certain matters. Thus, a sessional committee may be appointed to deal with the examination of petitions.

Private Bill Committees are appointed to dispose of the private bills in Parliament. They are selected by the Committee of Selection from among the list prepared by the party whips. The number of Private Bill Committees depends upon the number of the private bills to be disposed of. A Private Bill Committee in the House of Commons consists of four members, but the number is five in the House of Lords. A person who is appointed a member of a Private Bill Committee has to declare that he has no interest in the bill referred to the committee. He has to behave in a very impartial manner. Private Bill Committees have

to do a lot of work. Evidence is led before it in the case of controversial bills and eminent lawyers are engaged to argue for and against the bill. The report of the Private Bill Committee, whether in favour or against the bill, is always accepted.

### **Committee of the Whole House**

There was a time when the House of Commons considered all public bills in the Committee of the Whole House. Later on, the system of Standing Committee was introduced and as that became popular, the use of the Committee of the Whole House diminished. At present, only three kinds of bills are referred to the Committee of the Whole House—money bills, bills confirming provisional orders and any other bill which the House of Commons may decide to discuss in the Committee of the Whole House.

The Committee of the Whole House consists of all the members of the House of Commons. The only difference is that the Speaker does not preside over its meetings and his place is taken by the Chairman of the Committee of the Whole House. The mace is put under the table as a sign that the House is not sitting. The rules of procedure are relaxed and the member is allowed to speak as many times as he likes although he can speak only once in the open House. No closure motion can be moved. It should be noted that when the Committee of the Whole House considers revenue measures, it is known as the Committee of Ways and Means. When it discusses appropriations or expenditure, it is known as the Committee of Supply. When the Committee of the Whole House finishes its work, a motion is made that the Committee "rise and report". The Speaker comes back and takes his seat. "The mace is put in its place and the House begins to function again."

It is pointed out that there is not much to recommend the practice of submitting public bills for the consideration of the Committee of the Whole House. There cannot be much consideration and deliberation in a House of more than 600 members. To quote Ramsay Muir, "No bill, however important, ought to be discussed in a Committee of the Whole House; the Whole House has its appropriate opportunities of discussion, first on the second reading and then on the bill as amended at the report stage and on the third reading. These ought to be sufficient and the work of detailed consideration and amendment ought to be entrusted to those members who have special qualifications for dealing with the subject of the bill."

### **Delegated Legislation in England**

According to Dr. Jennings, "The power to make delegated legislation must grow in number as the scope of Government power increases through the development of collectivism. Although such a system was not unknown in the 18th century and not uncommon in the early 19th century, it has grown in number and importance with the development of the period of collectivism



which is usually said to begin from 1870. Formerly, the legislation used to deal with local government and public utility, but since 1906, the Central Government has been given many direct administrative functions, and there has consequently been an increase in the Rules and Regulations issued by the departments to supplement the legislation applying to their own Centrally-administered services". To quote the view of the Committee on Ministers' Powers of 1932, "In truth, whether good or bad, the development of the practice is inevitable. It is a natural reflection, in the sphere of constitutional law, of change in our ideas of government which have resulted from changes in political, social and economic ideas, and changes in the circumstances of our lives which have resulted from scientific discovery."

There has been a growing tendency to make more and more of provisional orders in place of private bills and also to allow the various departments of the Government to fill in the details in the bills passed by Parliament. In some cases, the rules and orders passed by the department require the confirmation of Parliament, while in others they do not. The rules and orders come to have the force of law as soon as they are issued. It is pointed out that in 1890, 160 rules and orders were issued, in 1913, 444 and in 1928, 809.

In the Rating and Valuation Act of 1925, the Minister concerned was not only given the power to issue orders and to "do any other thing which appears to him necessary or expedient," but also the authority "to modify the provisions of this Act so far as may appear to the Minister necessary or expedient for carrying the orders into effect." The National Government passed a few general laws to meet the emergency of 1931, but allowed them to be supplemented by Orders-in-Council. The Town Planning Act of 1932 allows the Ministry of Health to promulgate planning schemes in consultation with local authorities. The tariff legislation of 1932 empowered the Tariff Board to fix the tariffs according to what seems to it to be desirable in the circumstances of the case. The Unemployment Insurance Act of 1934 empowered the Ministry of Health to make changes in relief payments by an Order-in-Council. The Defence of the Realm Acts of 1914-16 gave the Crown powers to do anything and everything for the prosecution of war. The Emergency Powers Act of 1920 gave a large number of powers to the Government for the protection of essential services during the industrial disputes.

Many factors have been responsible for the growth of delegated legislation. The concept of the state has changed and instead of talking of a police state, we talk of a welfare state. This change in outlook has multiplied the duties and functions of the Government. This, in turn, necessarily involves the passing of more laws to achieve the ideal of a welfare state. Formerly, every bill used to be a small one, but civilisation has become so complicated that every piece of legislation has to be detailed. The rise in the number and size of the bills to be passed by Parliament

has created a problem of time. It is admitted on all hands that all this legislation cannot be enacted by Parliament even if its members are prepared to devote more time to it. The necessary consequence is that Parliament has to resort to the device of passing skeleton bills and leaving the work of filling in the details to the departments concerned. This involves what is known as delegated legislation. It cannot be denied that this development is a necessity although an evil one. It undoubtedly takes away the power of legislation from the hands of Parliament, but there is no help for it. It is out of the question for members of Parliament to enact all the legislation which is considered necessary by the Government.

Moreover, modern legislation is becoming highly technical. It is too much to expect that the ordinary members of Parliament will appreciate all the implications of modern legislation. Excepting a few experts in certain lines, the other members of Parliament are bound to bungle if they attempt to do the impossible. No wonder, it is considered to be safe under the circumstances to approve of the general principles of legislation and leave the details to the ministries concerned.

It is pointed out that the time available for drafting bills to be passed into law by Parliament is not adequate. If an attempt is made to draft bills within the short period, the drafting is bound to be defective. No wonder, the power is delegated to the departments concerned to issue Orders-in-Council which can be made at leisure and can be expected to be logical and intelligible.

It is impossible for any statesman or civil servant to foresee all contingencies that might arise in the future and provide for them in the bill when it is being passed by Parliament. It is convenient if some power is given to the departments concerned to add to the details to meet any contingency in the future. Moreover, full knowledge of the local conditions may not be available to the Government at the time of the passing of the law and it is desirable to adjust the law by means of Orders-in-Council to meet the requirements of the various localities. Delegated legislation gives flexibility to law and there is scope for adjustment in the light of experience gained during the working of any particular legislation.

Sir William Graham Harrison, First Parliamentary Counsel to the Treasury, assigned another reason in favour of delegated legislation. To quote him, "I should like also to emphasise a side of the question which appeals to me particularly as one who has drafted, not only a large number of statutes, but also a very large number of Statutory Rules and Orders, *viz.*, the superiority in form which, as a result of the different circumstances and conditions under which they are respectively prepared and completed, delegated legislation has over statutes. In most cases the time available for drafting Bills is inadequate, and their final form when they have passed both Houses is generally unsatisfactory. On the other hand, statutory Rules can be prepared in compara-



tive leisure and their subject-matter can be arranged in a logical and intelligible shape uncontrolled by the Parliamentary procedure and the necessity for that compression which every Minister (how ever much in debate he may use the draftsman as a whipping-boy) invariably requires in the case of a Bill."

In 1929, Lord Chancellor appointed a Committee on Ministers Powers to examine the question of delegated legislation. The committee pointed out that the practice was an unusual one and further stated that the Road Traffic Act of 1930 conferred on the Minister for Transport "wide powers of further restricting or even prohibiting the drafting of motor as well as other vehicles or of any specified class or description of vehicles on any specified road." The comment of the Committee was that "no one who has ever been in a motor car would desire Parliament to undertake this task itself and the staunchest upholder of the British Constitution is unlikely to maintain that it is seriously threatened by delegation of such a type." The recommendation of the Committee was that a Standing Committee of the House of Commons should be set up and all Rules and Orders must be submitted to the Standing Committee before they came to have the force of law. The Standing Committee should have the power to draw the attention of the House of Commons to anything exceptional in any Order before it was confirmed by Parliament.

In 1944, a Select Committee on Statutory Instruments was set up and its existence is renewed every session. The function of the Select Committee is to consider every statutory instrument or the draft of an instrument laid before the House of Commons with a view to determining whether the special attention of the House should be drawn to it or not.

It is also suggested that at the time of delegation of the power of making Rules and Orders to any Government department, the exact scope of delegation must be defined by Parliament. The use of the so-called Henry VIII Clause, which empowers a Minister to modify the provisions of the Act, should be given up and it should be allowed only in exceptional circumstances. Moreover, the jurisdiction of the Courts to inquire into the legality of rules and orders should not be excluded except in very exceptional circumstances. The public should be allowed to challenge the same in a court of law within a specified period. If it is intended to delegate the power of making rules and orders to any particular department, a memorandum should be attached to the bill concerned explaining the circumstances under which it is considered necessary to give that power to the department and also the safeguards which have been provided against the abuse of those powers by the said department.

### Decline of Power of Parliament

In 1893, the Duke of Devonshire remarked that "Parliament makes and unmakes ministries, it revises their action. Ministers make peace and war, but they do so at pain of instant dismissal

by Parliament from office; and in affairs of internal administration the power of Parliament is equally direct. It can dismiss a ministry if it is too extravagant or too economical: it can dismiss a ministry because its Government is too stringent or too lax. It does actually and practically in every way govern England, Scotland, and Ireland." However, that is not the case today. There is a decline in the power of Parliament. Critics go to the extent of saying that Parliament has become merely an instrument in the hands of the Ministry in power to register its decisions. It has no will or initiative of its own. According to Ramsay Muir, the growth of Cabinet dictatorship "has, to a remarkable extent, diminished the power and prestige of Parliament, robbed its proceedings of significance, made it appear that Parliament exists mainly for the purpose of maintaining or of somewhat ineffectually exercising an all good but omnipotent Cabinet and transferred the main discussion of political issues from Parliament to the platform and the members." To quote the same writer again, the House of Commons has shown its "increasing incapacity to perform its work, partly through excessive pressure of business, partly because of Cabinet dictatorship, partly owing to the faults of procedure of the bewildering way in which the national accounts are presented; the result is that the House of Commons has no real control of the enormous and growing power of bureaucracy, or over the vast but inefficiently wielded powers of the Cabinet."

According to Dr. Keith, "The extension of the franchise and the distribution of seats into one member constituencies in 1885 have strengthened the electorate of the party organisations, and diminished the independence of the Commons; the increase of electioneering costs with the extension of the franchise in 1918, and the payment of members, have conspired to render members extremely sensitive to the threat of dissolution, and have compelled them in the main to follow loyally the leader whose party aims they have bound themselves to support. The Commons thus has, on the one hand, become more sensitive to the control of the electors; on the other, it has ceased to control the Cabinet, and it dare not reject or substantially amend Government measures. The adoption of rules of procedure which more and more abstracts the rights of private members to secure discussion on legislation, and the absorption of the time of the Commons by the Government have contributed to the subordination of the Commons to the Cabinet."

According to Laski, "It is fashionable now-a-days for critics of the present position to lament almost with tears over the decline of his (private member) status. But the lament is wholly misconceived. It mistakes the functions the modern House of Commons has to perform; it mistakes the purposes of parties in the modern state; it is an anachronistic legacy of a dead period in our history, when politics was a gentleman's amusement, and the sphere of governmental activity was so small that an atomistic House of Commons was possible. The only way to restore to the private member the kind of position he occupied eighty, or even fifty,



years ago, is to go back to the historic conditions which made the position possible. History does not permit us to indulge in such luxuries." According to Lord Kennet, the years during which the procedure was worked out "were the years of struggle between the legislature on one hand and the Crown on the other. The chief care of the Commons was at first to prevent the Crown from getting money except through parliament, and in later years to prevent it from spending money on purposes other than those for which Parliament had provided it. Their procedure was planned to act as a check on the Crown in the interest of themselves, the economizers. But times have changed. The rule of Parliament is established, and the power of the Crown is gone. A check upon the Executive's power over the purse is still needed by the Commons as much as ever, but the Executive upon whose power the check has to be exercised is now not the Crown but its Ministers responsible to Parliament. Procedure planned to check the Crown is out of date."

Critics point out that the position of the members of Parliament has become very weak. The members belonging to the ministerial group have to vote for the party in power. They have to obey the orders of the Whips. The party system has become so rigid that no member of a party dare disobey the mandate of the party. If he does so, he runs the risk of committing political suicide. Moreover, that may also involve the fall of the ministry and the loss of prestige and power of the party to which he belongs. As regards the members belonging to the Opposition, they also hesitate to vote against the ministry. The reason is obvious. The ministry has the power of dissolution and consequently the members know that even if they successfully censure the ministry, there is every likelihood of the House of Commons being dissolved. This undoubtedly is bound to affect adversely the interests of the sitting members who have to spend a lot of time and money and put up with a lot of inconvenience at the time of new elections. The result is that the ministry continues to do whatever it wants and the members do not dare to challenge it. The adoption of the devices of closure, closure by compartments, Kangaroo closure, guillotine and time-table have put many checks on the freedom of discussion of members of Parliament. The result is that the members of Parliament find themselves helpless. The view of Mr. McKinnon Wood, an ex-Cabinet Minister, was that he would prefer to be a member of the London County Council than a private member of Parliament. Mr. Ramsay Muir has given a description of the House of Commons on an ordinary evening "when visitors will see forty or fifty men and one or two women sprawling here and there on the benches, listening to—no, not as a rule listening to but enduring—a speech from one of their members, while waiting for an opportunity to make speeches of their own. There will be other members in the House, some in the lobbies writing letters, others in the library hunting out references for a speech or preparing an article, others in the smoke-rooms chatting and playing chess, still others in the dining room or on the terrace entertaining

visitors; none of them paying any attention to the debate but all waiting to record their votes without having heard the arguments. There will be others in clubs within call or dining with friends or at the theatre. They will come in towards the end of the evening ready to take part in division, having been told by their whips that the discussion will be carried on until such an hour, when a division will take place; sometimes the discussion has to be artificially prolonged in order to fulfil these promises."

The view of Dr. Finer is that private members of Parliament "have little to add to discussion, because neither special training nor formal profession fits them for it. Nor is there anything so special about the locality they represent that its voice ought to be heard. When it is, indeed, the party caucus knows it, and promptly includes it in the ingredients of the party's policy. It is enough if the opportunity is allowed to men of exceptional talent and character to denounce the misdeeds of Government and Opposition when the occasion demands."

The growth of delegated legislation has weakened the control of Parliament over legislation and strengthened the hands of the executive.

Formerly, all brilliant persons of England aspired to a parliamentary career and left no stone unturned to enter Parliament. The result was that the best brains of the country were to be found in Parliament and no wonder Parliament enjoyed great prestige. However, that is not the case today. There are many openings for brilliant young men of England in addition to a parliamentary career. A person may prefer to be a professor of Political Science in the London School of Economics than to be a member of Parliament. Likewise, it may be considered to be more honourable to be the Editor of *The Times* of London or the Chairman of a leading Bank or Industrial Corporation than to be a member of Parliament. The attraction for a seat in Parliament has lessened particularly on account of the fact that the members do not find enough of opportunity to express themselves. Nobody would like to take the trouble of spending money and time to enter a legislature where there may not be any openings for him. As the standard of members of Parliament has gone down, the prestige of Parliament has also declined.

The public opinion in England has become very strong and consequently the members of Parliament dare not do what they please irrespective of the wishes of the people. No ministry having a majority in Parliament will dare to pass laws which are opposed by the public opinion.

The result of all these factors is that Parliament is not so strong as it used to be. The real power has passed into the hands of the Cabinet. It is true that Parliament can criticise the Cabinet and also force it to accept its point of view but as a rule the real power remains in the hands of the ministers and not with the members of Parliament.



**Hansard**

On every morning from Tuesday to Saturday when the House of Commons is sitting, there is produced the official report of the proceedings in the House known as Hansard. This small book, now costing a shilling every day, contains almost every word spoken in the House until 10.30 p.m. Sir Alan Herbert has written thus about Hansard:

Read Hansard. For the papers cannot tell  
The many things that Parliament does well.  
How many a Member labours many days  
To find his figures and perfect his phrase,  
And waits and waits, while many a meal goes by,  
Hungry and worn, to catch the Speaker's Eye,  
Pours out his heart, his wisdom and his jokes,  
And is enrolled among the "Also Spoke's"!  
You'll be surprised, good citizens, to see  
How right your representatives can be!  
It should be cheaper; sixpence is a shame:  
But it's a good sixpenn'orth, all the same.

According to Bernard Crick, "Britain today suffers under the burden of three native curses: that of amateurism, that of 'inner circle' secrecy and that of snobbery. All three serve to debase both the quality of political life and the energy of economic activity. The unreformed Parliament is more than a symbol of these things; it helps to perpetuate them by the most effective of all forces in politics and society—example. If Parliament were reformed, the whole climate of expectations could change, much of the sweet fog we muddle through might lift. Continued decline may be our lot, decline not merely in external influence but in any internal sense, both individually and together, that there are things worthy doing in Britain. But if renewal in industry, learning and the arts, if it comes at all, comes in such a way that it by-passes Parliament, then this could mean the rule of the expert and the bureaucrat alone—a condition for more frightening than that 'mere politics' of which at least ensures the existence of that which is the greatest of all things, freedom (or, more precisely, the ability to enjoy freedom). Politics is the great civilizer, the activity which mediates between the expert and the public, between declining classes and rising, indeed between all competing interests, whether of mind or matter, which compose society—competing so long as resources remain limited and demands (or imagination) infinite. Parliament is the forum of politics in Britain and any neglect of it means danger for freedom and for all those qualities of spontaneity, adaptability and invention upon which depend both the very survival of States and their worthiness to survive at all." (*The Reform of Parliament*, p. 203.)

**SUGGESTED READINGS**

- |                   |  |
|-------------------|--|
| Bailey, S. D.     | : The Future of House of Lords (1954). |
| Bailey, Sydney D. | : The Palace of Westminster, 1949.     |

- Briers, P. M. and Others* : Papers on Parliament: A Symposium (1949).  
*Brown, W. J.* : Everybody's Guide to Parliament, 1952.  
*Bromhead, P. A.* : The House of Lords and Contemporary Politics, London, 1958.  
*Campion and Others* : Parliament, A Survey (1952).  
*Carr, C. T.* : Delegated Legislation, 1921.  
*Chubb* : Control of Public Expenditure.  
*Cocks, T. G. B.* : The Parliament at Westminster, 1948.  
*Crick, Bernard* : The Reform of Parliament (1964).  
*Fell, Sir Bryan* : The Houses of Parliament, 1948.  
*Galloway, G. B.* : Congress and Parliament, 1955.  
*Hanson and Wiseman, H. V.* : Parliament at Work (1962).  
*Hastings, Maurice* : Parliament House, 1950.  
*Ilbert, Sir Courteney* : Parliament, 1947.  
*Jennings, W. I.* : Parliament, 1939.  
*James, Robert Rhodes* : An Introduction to the House of Commons, London, 1961.  
*Kersell, John E.* : Parliamentary Supervision of Delegated Legislation (1960).  
*Laski, H. J.* : Parliamentary Government in England.  
*Law, William* : Our Hansard, 1950.  
*Mackenzie, K. R.* : The English Parliament, 1950.  
*Marshall, G.* : Parliamentary Sovereignty and the Commonwealth, 1959.  
*May, Sir Thomas Erskine* : The Law, Privileges, Proceedings and Usage of Parliament.  
*Morrison, Lord* : British Parliamentary Democracy (1962).  
*Morrison, Herbert* : Government and Parliament.  
*Macdonagh, Michael* : The Speaker of the House, 1914.  
*Nicolson, N.* : People and Parliament, 1958.  
*Pollard, A. F.* : The Evolution of Parliament, 1926.  
 Report from the Select Committee on Delegated Legislation, 1953.  
 Select Committee on Procedure (1959).  
*Taylor, E.* : The House of Commons at Work.  
*Winterton, Earl* : Orders of the Day, London, 1953.  
*Young, Roland* : The British Parliament (1962).



## CHAPTER 6

### THE JUDICIAL SYSTEM IN ENGLAND

#### Main Features

It is desirable to refer to some of the salient features of the judicial system in England. The first thing to be noted is that the court in England have a reputation for fairness, impartiality and incorruptibility. The judges are not influenced by any consideration except that of justice and fair play. The Act of Settlement of 1701 provides that the judges in England will hold office during good behaviour and not during the pleasure of the executive. This, undoubtedly, helps them to discharge their duties without any fear or favour. It is difficult for the clients to bribe the judges in England. That may be partly due to the high salaries given to the members of the judiciary in that country. But that is also due to the high traditions of judicial integrity established during the course of centuries.

Another feature of the English judicial system is the absence of judicial review. In the case of U.S.A., the courts have the power to decide as to whether a particular law is *ultra vires* or *intra vires*. The same is the case in India. Both the Supreme Court and the High Courts have got the power to decide whether a particular law is a valid piece of legislation or not. However, that is not the case in England. Parliament can pass any law it pleases and the matter rests there. The courts in England have no power to give their decision on the constitutionality or otherwise of a particular piece of legislation.

There are no separate administrative courts in England. In the case of France, there are two separate sets of courts, viz., ordinary courts and administrative courts. However, in the case of England all cases have to be tried by the ordinary courts and there is no special court where the servants of the Government can be tried as in France. Irrespective of the position and status of a particular individual, he has to be tried by the ordinary courts.

The judges and courts in England have played an important part in safeguarding the liberties of Englishmen. In India and the U.S.A., certain fundamental rights have been guaranteed to the people by the Constitution. There is no such thing in England. That task has been admirably performed by the judges in England. It is no exaggeration to say that the courts in England have acted as the guardians of the liberties of Englishmen. Judges have not hesitated to give judgments against the arbitrary orders of the executive. It is true that on occasions of crises, the liberties of Englishmen have been suspended by Act of Parliament and in that case the courts have been helpless, but that has been

usually a temporary phase. On the whole, the English judges and courts have been successful in safeguarding the liberties of the Englishmen.

Another feature of the English judicial system is the jury system of the country. The working of the jury system in that country has been its pride. The jurors in England have shown impartiality, fearlessness, experience, knowledge and common-sense. The juries have given decisions even against the Government. The juries are used mostly in criminal cases.

Another thing to be noticed in this connection is that the judicial procedure is simple and judges have been given the authority to override technicalities. If a technicality stands in the way of justice, an English judge has the power to set aside the same. He must aim at giving justice to the party and that also in a speedy and efficient manner.

Reference may be made to the dual system of the Bar in England. The lawyers are divided into two parts: the solicitors and the barristers. While the solicitors deal with the clients and prepare the cases, it is the barristers who argue them in the courts. The system may be expensive but, undoubtedly, it has resulted in efficiency.

### Rule of Law

Rule of Law is one of the unique characteristics of the English Constitution. Bluntly put, it means that it is the law of England that rules the country and not the arbitrary will of any individual. Law is supreme over all. None can claim exemption or immunity from it. According to Lord Hewart, the rule of law means "the supremacy or dominance of law, as distinguished from mere arbitrariness or some alternative mode which is not law of determining or disposing of the rights of individuals."

According to Prof. Dicey, the rule of law embraces three "distinct though kindred conceptions". In the first place, it means that "no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts". This means that no person can be punished in England unless and until it is definitely proved that he has violated some definite law of the country. If a person cannot be held guilty of violating a particular law of the country, he must be set at liberty. There can neither be any illegal imprisonment nor illegal punishment. If a person has been imprisoned without any authority of law, an application can be made for a writ of habeas corpus and if the detaining authority cannot put forward a legal plea in its defence, the person has to be discharged. The executive have no authority to put a person behind the bars arbitrarily.

Secondly, rule of law means that "no man is above law but that every man, whatsoever his rank of condition, is subject to the ordinary law of the realm and amenable to the jurisdiction



of ordinary tribunals. What is law—legal rights and obligations for one must hold equally as such for all citizens." This means that whatever the status of a person, he must submit to the ordinary law and the ordinary courts of the country. There are no separate courts for the trial of Government servants in England, although there are so in France. Likewise, there is no separate law by which the servants of the Government can be tried. They have to be tried by the same law by which an ordinary citizen is tried. Moreover, no person can plead immunity from obedience to the law of the land. According to Hegan and Powell, "The persons who compose the Government of the day cannot do just as they please, but must exercise their powers strictly in accordance with the rules which Parliament has laid down."

In the third place, rule of law means that "the general principles of the constitution are the result of judicial decisions determining the rights of private persons in particular cases brought before the courts." This refers to the important part played by the English judges in safeguarding the rights and liberties of Englishmen. Prof. Dicey was a Liberal of the 19th century and as such paid a tribute to the liberal judges who had played an important part in safeguarding the rights and liberties of Englishmen in the past.

Prof. Dicey put great emphasis on the rule of law in England. He glorified in the fact that the rule of law established the equality of all citizens before the courts of law. "Every official from the Prime Minister down to a constable or collector of taxes is under the same responsibility for every act done without legal justification as any other citizen." Moreover, there was no scope for any arbitrary detention or punishment. The law must have its own course.

Prof. Dicey pointed out that the rule of law had a healthy effect on the arbitrary tendencies of Government servants. No Government official could dare put an Englishman behind the bars without any legal justification. He knew that if it were found that his action was illegal, he was liable to be burdened with damages. Moreover, while carrying out the orders of the superiors the Government servants were always to keep in mind the fact that they must not go against the law of the country. If a soldier was ordered to disperse a mob, he was not to kill persons unnecessarily. He was merely to disperse the mob without causing injuries to the people. He was always to keep in his mind the fact that if he killed any person he was liable to be tried for murder and punished if found guilty. This fact was bound to have a healthy check on the actions of Government servants. Indirectly, it was conducive to the liberties of the Englishmen.

### **Exceptions to the Rule of Law**

Critics point out that the rule of law which was so much praised by Prof. Dicey is not being observed in England. Many violations of the rule of law are pointed out in this connection.

(1) The Public Authorities Protection Act of 1893 gives special protection to officials. The proceedings against Government servants must be started within six months and if it is not done then it becomes time-barred. Moreover, if the proceeding against a Government servant fails, the plaintiff has to pay very heavy costs. Obviously, the object of this provision is to discourage private individuals from starting proceedings against Government servants.

(2) While an ordinary employer is responsible for the acts of his employees in England, the same is not true of the Crown. The latter is not responsible for the wrong acts of employees. The Crown is completely immune. It is only the Government servants themselves who are responsible for their acts of omission and commission. It is pointed out that the king can do no wrong and he cannot be tried in courts of law created by his own authority. There is a special remedy by way of Petition of Rights in the case of a breach of contract or detention of property by the Crown. Even the remedy of Petition of Rights is not always available. A soldier filed a petition for arrears of pay, but his petition was rejected. In 1918, a Swedish Company got a guarantee from the British legation at Stockholm that if a ship belonging to the Company went to England, the same would not be detained in England. Although the guarantee was given after consulting the proper authorities, the ship was detained in England. The Company presented a petition claiming damages, but the petition was rejected. Rowlatt remarked thus: "This was not a commercial contract. It was merely an expression of intention to act in a particular way in a certain event. It is not competent for the Government to fetter its future executive action which must necessarily be determined by the needs of the community when the question arises. It cannot by contract hamper its freedom of action in matters which concern the welfare of the State."

(3) It is pointed out that the Home Secretary has an absolute discretion to grant certificates of naturalisation as British subjects. He can cancel the certificates at any time he likes. He has full discretion in the matter of deporting any undesirable alien. For all these things, his action cannot be challenged in a court of law.

(4) The king has the power to grant or refuse passports to travel in any foreign country. The exercise of the power cannot be challenged in any court of law.

(5) Foreign rulers and diplomats enjoy immunity before courts of law. They cannot be tried even if they violate a law of the country. No action lies against trading vessels belonging to a foreign state. This is clearly a violation of the rule of law.

(6) No suit can be filed against a trade union for any act committed by its officers or members in furtherance of a bona fide trade dispute.

(7) The Public Order Act of 1936 gives the police the power to regulate or prohibit public meetings and processions. It can



also declare drilling and wearing of unauthorised uniforms, as illegal.

(8) Formerly, peers could only be tried by the peers. That was obviously a violation of the rule of law. However, this privilege was taken away by the Law Reform Act of 1947.

(9) Lord Chamberlain has the power to censor the plays and if he imposes a ban, the same cannot be removed by any court of law.

(10) The power of the Home Secretary to open and detain letters is a violation of the rule of law.

(11) The Customs Consolidation Act, 1866 and Inland Revenue Act, 1890, give protection to customs and excise officers regarding anything done by them in furtherance of a bona fide trade dispute.

(12) Judges cannot be held responsible for things done by them in the official course of their business. However, if a vacation judge unlawfully refuses a writ of habeas corpus, he can be sued for a penalty of £500.

(13) The Crown can terminate any contract of service. It is not bound even by an express term in the contract. The result is that the servants of the Crown hold their offices during the pleasure of the Crown.

(14) However, a reference may be made to the Crown Proceedings Act of 1947 which came into force from January, 1948. According to this Act an ordinary individual can file a suit against the Government in the same way as he can do against any other individual. The result is that the immunity of the Crown in respect of torts committed by its servants disappears and there is no necessity for a petition of right. A regular suit can be filed to recover the damages.

(15) While a citizen is subject only to the ordinary law, he can be subject also to the special law affecting his particular profession. That special law may be enforced by special tribunals. The armed forces are subject to military law or naval law in addition to the ordinary law of the land and offences against that law are triable by courts-martial. Likewise, the clergy are subject to ecclesiastical law enforced by the ecclesiastical courts. Solicitors are subject to the disciplinary powers of a statutory body composed of the members of the profession with a right of appeal to the High Court. The members of the medical profession are tried by the General Medical Council for professional misconduct. Similar powers are exercised by the General Dental Council over the dentists. Group law is not inconsistent with rule of law in case ordinary judicial methods are observed and arbitrary punishments are avoided.

(16) It is contended that planning is inconsistent with rule of law. The reason given is that the rule of law means that "Government in all its actions is bound by rule, fixed and announced

beforehand—rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one's individual affairs on the basis of this knowledge". Such a certainty is not to be found in modern conditions.

✓(17) The United Kingdom gives immunities to persons and property of other states and their rulers and diplomatic agents, in the form of exemption from trial in the ordinary courts. Similar immunities have been given by the International Organizations (Immunities and Privileges) Act, 1950 to recognised international agencies and their officers.

✓(18) Section 4 of the Trade Disputes Act, 1906 prohibits the bringing of any action against a trade union in respect of a tort. This rule applies whether the trade union is sued in its own name through its officers. The immunity of a trade union is not confined to acts done in contemplation or furtherance of a trade dispute but extends to all actions for tort.

(19) There are many special courts for the decision of issues which affect the proprietary rights of citizens. Special tribunals appointed by Ministers decide questions of insurability. They also decide the amount of compensation to be paid for the compulsory acquisition of land. If a minister interested in carrying out a policy is allowed to give decision on a judicial issue, his action is against the rule of law. Judicial decisions not referred to ordinary courts should be entrusted to a tribunal with a chairman with legal qualifications. On questions of law, there should be a provision for an appeal to ordinary courts.

✓ It may be mentioned in this connection that even Dicey himself realised later on that his description of the rule of law as given by him in the 1880's did not hold good. He wrote thus in 1915: "The ancient veneration for the rule of law has in England suffered during the last 30 years a marked decline." He found the growth of administrative justice in the country. The various departments were given the right of deciding cases and the ordinary courts of law could not interfere with them.

According to Prof. A. B. Keith, "Most of the criticism advanced against the idea of law is based on misunderstanding, or on dislike of the principle which opposes dictatorship of parties of the right or the left. There is, of course, nothing in the rule to prevent the prudent and carefully controlled delegation of legislative and judicial powers to specially selected bodies. Such delegation is of long standing in Britain; much of the attack made on it rests on exaggeration and the treatment of remote possibilities as real dangers." (*Constitutional Law*, pp. 32-33.)

According to Wade and Phillips, "The rule of law remains a principle of our constitution. It means the absence of arbitrary power; effective control of and proper publicity for delegated legislation, particularly when it imposes penalties; that when discretionary power is granted the manner in which it is to be exer-



cius should as far as is practicable be defined; that every man should be responsible to the ordinary law whether he be private citizen or public officer; that private rights should be determined by impartial and independent tribunals and that fundamental private rights are safeguarded by the ordinary law of the land. If this be accepted, it is only necessary to contrast the state of affairs in the totalitarian States, with their apparatus of secret police and people's courts administering not law, but the orders of those who can dictate what is the people's will, in order to answer affirmatively the question—does the rule of law today remain a principle of the constitution? This does not mean that it is a fixed principle of law from which there can be no departure. Since Parliament is supreme, there is no legal sanction to prevent the enactment of a statute which violates the principle of the rule of law. The ultimate safeguard then is to be found in the acceptance of the principle as a guide to conduct by any political party which is in a position to influence the course of legislation."

According to Dr. Finer, "England suffers from a system which at any moment may result in serious injustice to the individual, the public, the official. There is no uniformity of principles, for the Rule of the Law has been superseded by a number of sporadic and unregulated growths."

Although the Rule of Law as expounded by Dicey needs modification, it is still a principle of the English Constitution. In the words of Wade and Phillips, it "involves the absence of arbitrary power; effective control and proper publicity for delegated legislation particularly when it imposes penalties; that when discretionary power is granted the manner in which it is to be exercised and as far as practicable be defined; that everyone should be responsible to the ordinary law whether he be private citizen or public officer, that private rights should be determined by impartial and independent tribunals; and that fundamental private rights are safeguarded by the ordinary law of the land."

### Organization of the Judiciary

The present judicial system of England is based on the Acts passed during the 1870's. There is bifurcation of courts in England. Criminal cases are tried by Criminal Courts and civil cases by Civil Courts. While in criminal cases, one party is always the Crown, that is not so in the case of Civil Courts. Moreover, while in criminal cases the object is to punish the criminal, that is not so in civil cases.

### Criminal Courts

The lowest Criminal Court is one of summary jurisdiction. It deals with petty offences. The work is done either by the stipendiary magistrate or by a Justice of Peace. The procedure adopted in these courts is purely summary.

From these courts, appeals can be taken to the Court of Quarter Session. These courts are also known as County Courts.

These courts have also original jurisdiction in slightly more serious cases.

Appeals can further be taken to the Assizes. The Assizes are so called because these are held periodically in each county by one of the judges of the High Court. The latter goes on a circuit and tries serious offences with the help of a jury. The Circuit Court hears appeals both in civil and criminal cases and can be compared to the District and Sessions Judges in India. London has an Assizes' Court known as the Old Bailey. It meets 12 times a year.

Appeals can be further taken to the court of Criminal Appeal. The Court consists of the Lord Chief Justice of England and all the judges of King's Bench Division of the High Courts. The Court of Criminal Appeal is only a branch of High Court of Justice. It hears appeals from all the lower courts on points of law and ordinarily its decisions are final. However, an appeal can be taken to the House of Lords if the Attorney-General certifies that the case involves an important question of law.

The final court of appeal in both criminal and civil cases for Great Britain and Northern Ireland is the House of Lords. While hearing appeals, the House of Lords consists of the Lords of Appeal in Ordinary and Law Lords who have held high Judicial offices. A quorum of at least three Lords is essential. While the House of Lords hears appeals in all civil cases that is not so in criminal cases. A certificate of the Attorney-General is essential in criminal cases.

### Civil Courts

The Courts of Summary Jurisdiction try minor cases. County Courts occupy a little higher position. They meet at intervals at different places. The County Courts are presided over by judges appointed by the Lord Chancellor from barristers who have a standing of seven years. Every effort is made to compromise the case.

Appeals from the County Courts and suits involving large sums of money are heard by the High Court of Justice. This court has three divisions; these are the Chancery Division, the King's Bench Division and the Probate, Divorce and Admiralty Division.

From these three divisions appeals can be taken to the Court of Appeal consisting of five judges. The Lord Chancellor is the president.

As in criminal cases, the House of Lords is the highest court of appeal for Great Britain and Northern Ireland in civil cases.

### Judicial Committee of Privy Council

The Judicial Committee of the Privy Council was set up by an Act of 1833 to exercise the residuary judicial powers of the Crown. It hears appeals from the ecclesiastical courts of the Uni-



ted Kingdom and the courts of the Channel Island. It is the final Court of Appeal for the Colonies and Dependencies. Appeals come before it either by right or by special leave.

Although the composition of the Privy Council is the same as that of the House of Lords as the highest Court of Appeal, there are certain differences between the two. The Judicial Committee does not pronounce judgments. It merely advises the King to give the judgment in a particular way, although the part of the King is merely a formal one and the appeals can be taken directly to the Judicial Committee of the Privy Council. Moreover, in the case of the House of Lords, the majority decisions prevail although the minority views are also allowed to be expressed. That is not the case with the Judicial Committee of the Privy Council where only one judgment is given and no reference is made to the dissenting opinion. Another difference is that while the House of Lords is bound by its previous decision, the Judicial Committee of the Privy Council is not. It has been held that a decision of the House of Lords can be upset only by fresh legislation on the subject and not by a new decision of the House of Lords.

It is to be noted that formerly a very large number of appeals were taken to the Privy Council from the Dominions and India. So far as India is concerned, they were completely stopped after the setting up of the Supreme Court of India in 1950. There is also a tendency to abolish the right of appeal from the Dominions. In the case of the British Coal Corporation vs. the King, it was held by the Privy Council that the Canadian Parliament could validly abolish the right of appeal to the Privy Council (1935 Appeal Cases 500). In the case of Attorney-General for Ontario versus Attorney-General for Canada, the Privy Council remarked thus: "It is not consistent with the political conception which is embodied in the British Commonwealth of Nations that one member of that Commonwealth should be precluded from setting up, if it so desires, a Supreme Court of Appeal having a jurisdiction both ultimate and exclusive of any other members."

It is to be noted that the right of appeal in criminal cases was abolished by Canada in 1933 and the British North America (Amendment) Act, 1949, abolished completely all appeals to the Privy Council. The Union of South Africa abolished all appeals to the Privy Council in 1960.

### **Growth of Administrative Justice in England**

While formerly all cases in England were tried by the ordinary courts of the country, that is not the case today. In recent times, there has been an enormous growth of what can be called administrative justice.

This is partly due to the fact that the sphere of state activity has expanded tremendously during the last 50 or 60 years. Under the stress of circumstances, the British Parliament has been forced to resort to delegated legislation and administrative adjudication. While administering public services, many judicial and quasi-



judicial problems arise and these have to be tackled quickly. Town-planning, construction of highways and housing schemes involves the compulsory acquisition of property owned by private individuals and there arises the necessity of paying them compensation. That work is essentially of a judicial nature.

The practice of giving judicial functions to the administrative departments started on account of the necessity of enforcing social legislation. The Railway Commission was set up in 1873 and the Canal Commission was established in 1888 and both of them were given judicial powers. By 1920, judicial powers were conferred on the Board of Trade, Home Secretary, Minister of Education, Electricity Commission, Minister of Health, the London Building Tribunal, the Registrar of Friendly Societies, etc. As a large number of judicial powers came to be exercised by administrative tribunals, Lord Hewart condemned the new development in his well-known book, *The New Despotism*, published in 1929. As there was a lot of hue and cry, the Committee on the Ministers' Powers was set up in the same year to consider "the powers exercised by or under the direction of ministers of the Crown by way of delegated legislation and judicial or quasi-judicial decisions and to report what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the law." The Committee submitted its report in 1932. It came to the conclusion that the criticism of Lord Hewart was not well founded. However, it recommended that Parliament should not confer judicial powers on administrative departments indiscriminately. That should be done only in very exceptional cases. Even when that was done, the power should be given to ministerial tribunals and not to the ministers in charge of departments. In the words of Robson, "The Committee, in fact, allowed itself to be hamstrung by the illusory distinction between judicial and quasi-judicial decisions which was contained in the Committee's terms of reference and introduced in many different forms by several witnesses, notably the Treasury Solicitor. The Committee's purpose in pursuing this chimerical distinction was to recommend that judicial decision should normally be confined to the courts while quasi-judicial decisions can properly be entrusted to administrative tribunals."

Even after the recommendations of the Committee in 1932, there has been a further growth of administrative adjudication. The National Service Acts, the Town and Country Planning Acts, the Family Allowances Act, 1945, the Agricultural Act, 1947, the National Insurance Act, 1946, the Transport Act, 1947, the National Insurance (Industrial Injuries) Act, 1946, etc., "have increased the number, enlarged the jurisdiction and raised the status of administrative tribunals." In most cases, tribunal consisting of three persons have been appointed. Their chairmen are independent but the other members represent the various interests involved. In some cases, even judicial powers have been given to ministers. No provision has been made for any administrative court of appeal but superior tribunals have been appointed to hear appeals



from the lower tribunals. Reference may be made in this connection to the National Insurance Commissioner, Deputy Commissioners, the Industrial Injuries Commissioner, Deputy Commissioner, Umpires, Deputy Umpires, etc.

### Frank Committee Report (1957)

In 1955, a committee was appointed under the chairmanship of Sir Oliver Frank to report on the working of administrative tribunals in the country. The Committee submitted its Report in August 1957. The Report rejected the view of the Treasury that the administrative tribunals were a part and parcel of the machinery of the Government and consequently were not judicial institutions. The view of the Report was that the administrative tribunals were independent organisations of adjudication for the impartial assessment of the claims of the individuals.

The Report recommended that the chairmen of administrative tribunals should be appointed by Lord Chancellor and not by any minister. The proceedings of the tribunals should be open. Any citizen who was a party to a case, had a right to be told in good time the case he was going to meet. There must be a full statement of the case along with the relevant evidence. The parties concerned must know the reasons for the decision. The final orders of the minister also should contain his reasons in full for the decision.

It was recommended in the Report that all decisions of administrative tribunals should be subject to review by ordinary courts on points of law. The decision should be entrusted to a court rather than to a tribunal in the absence of special considerations that make a tribunal more suitable. Moreover, a decision by a tribunal was to be preferred to a decision by a minister. To quote the Report, "we regard both tribunals and administrative procedures as essential powers to society but the administration should not use these methods of adjudication as convenient alternatives to the courts of law." The arbiter of the rights of individuals must be independent. "The intention of Parliament to provide for independence is clear and unmistakable."

It is to be observed that the old prejudice against administrative law and administrative justice is disappearing from England. It is realised that under the new circumstances, administrative justice has become a necessity, even if an evil necessity.

### SUGGESTED READINGS

- |                               |  |
|-------------------------------|--|
| <i>Carr, Sir Cecil Thomas</i> | : Concerning English Administrative Law.         |
| <i>Dicey, A. V.</i>           | : Law of the Constitution.                       |
| <i>Giles, F. T.</i>           | : The Magistrates' Courts.                       |
| <i>Griffith and Street</i>    | : Principles of Administrative Law, 1962.        |
| <i>Hanbury, H. G.</i>         | : The English Courts of Law.                     |
| <i>Hewart, Lord</i>           | : The New Despotism, 1945.                       |
| <i>Jennings, W. I.</i>        | : The Law and the Constitution.                  |
| <i>McWhinney.</i>             | : Judicial Review in the English Speaking World. |
| <i>Robson, W. A.</i>          | : Justice and Administrative Law (1947).         |
| <i>Robson, W. A.</i>          | : Administrative Law in England.                 |
| <i>Wade &amp; Phillips</i>    | : Constitutional Law.                            |

## CHAPTER 7

### PARTY SYSTEM IN ENGLAND

According to Lord Bryce, "Parties are inevitable. No free large country has been without them. No one has shown how representative government could be worked without them. They bring order out of the chaos of a multitude of voters." According to A. L. Lowell, "The English Government is built as a city that has unity in itself, and party is an integral part of the fabric. Party works, therefore, inside, instead of outside, the regular political institution. In fact, so far as Parliament is concerned, the machinery of party and of government are not merely in accord, they are one and the same thing." In the words of Ramsay Muir, "It is the leadership of a party that gives to the Prime Minister his enormous power; it is common membership of party that gives unity of character and aim to a Cabinet; it is the existence of an organised supporting party in the House of Commons that enables the Cabinet to carry on its work and (when the party is in a majority) endows it with a complete dictatorship over the whole range of government; and this dictatorship is only limited or qualified by the fear of those who wield it lest any great blunder may weaken the party in the country and may bring downfall at the next election."

The growth of the party system in England can be traced back to those times when a struggle for supremacy took place between the King and Parliament in the Stuart period. The supporters of the King were known as the Cavaliers and the supporters of Parliament were known as Roundheads.

In the time of Charles II, an attempt was made to pass the Exclusion Bill in 1679 with a view to prevent the succession of James II, the brother of the King. Charles II did not approve of the move and dissolved the Parliament. The supporters of the Bill started petitioning the king to summon a new Parliament, and hence came to be known as 'Petitioners'. The opponents of the bill expressed their abhorrence of the attempt to force the king to summon a Parliament and came to be known as 'Abhorrrers'. In the time of William III, they came to be known as the Whigs and Tories respectively. The Whigs stood for putting restrictions on the powers of the King and the Tories supported the royal prerogative.

After the Reform Act of 1832, the nomenclature of the parties was changed and they came to be known as the Conservatives and the Liberals. These parties held the field during the 19th century.

1. In 1882, W. S. Gilbert wrote thus:  
"How nature always does contrive

(Contd. on page 135)



It was in 1900 that the Labour Party came into existence. To begin with, it was very weak and consequently did not carry much weight. However, it gained in strength with the passage of time and formed its first ministry in 1924 and the second one in 1929-31. Up to the rise of the Labour Party, England had a two-party system and consequently derived certain advantages. She was able to avoid all the evils of the multiple-party system which are so well known to the students of French politics. The two-party system concentrates powers and responsibility at any given time in a single, recognisable, unified group of leaders. The result is there is continuity and stability. There is promptness and decisiveness of action. A kind of dilemma was created in British party politics after the emergence of the Labour Party, but it is being resolved. The reason is that the Liberal Party is breaking up and the two important parties in England today are the Labour Party and the Conservative Party.

### Conservative Party

As regards the Conservative Party, it derives its membership from the nobility, the country's squires, and clergymen of the Established Church. It includes businessmen, imperialists, world exploiters, militarists and professional classes. The party makes a special appeal to the industrial corporations, banks and the liquor interests, "Beerage". Conservative Party has following among the tenants in the agricultural countries. It also boasts sometimes that it has the backing of a large number of labour votes.

As regards the policy and creed of the Conservative Party, it stands for private property, the Established Church, the Crown, the Empire and the divine right of the landed aristocracy and capitalists to govern the country. It stands for the glorification of the Empire, worship of monarchy and the constitution of the Established Church. It is opposed to giving independence to Colonies and that is why it was the enemy of the independence movement in India. The party is not prepared to liquidate the British Empire. It does not stand for foreign alliances and entanglements. It shows merely lip sympathy with the principle of collective security and the ideals of the United Nations.

According to Edward Marjoribanks, "There are, perhaps, two main tenets, the protection of property and the maintenance of the British Empire under the Crown, for which modern English Conservatism stands. For the Conservatives the safe possession of property is, after the protection of life itself, the distinguishing mark of civilised society, and one of the first duties of the state is to ensure it."

According to Edward Marjoribanks, "There are, perhaps, two

*(Contd. from page 134)*

That every boy and every gal  
That's born into this world alive.  
Is either a little Liberal  
Or else a little Conservative."



main tenets, and precedents. According to Dr. Finer, "The essence of conservatism is to be discovered in the social institutions of which it approves and its attitude to the idea of progress. The social institutions favoured by Conservatives are Crown and national unity, Church, a powerful governing class, and the freedom of private property from state interference." The Conservative Party believes in the mission of the English race to civilize the backward people of the world even against their will and "even with violence to the point of brutality."

The younger element in the Conservative Party stands for a vigorous party programme to compete successfully with the Labour Party. In 1947 was published the Industrial Charter which accepted the necessity of central planning and it was approved by the Conservative Conference of 1947. "The Right Road for Britain", which was a statement of the Conservative Party programme in 1949, advocated the maintenance of full employment. The party manifesto of 1951 put emphasis on housing and that of 1955 pledged the party to "prosperity through free enterprise."

As regards the organisation of the party, the Local Conservative Association consists of the members of the party in a locality, and it elects its own committee with a chairman, secretary and a treasurer. It is this committee which makes a choice of the party candidates from the locality. The Local Association is free to choose its candidate if it can finance the election from its funds. If monetary help is asked for from the Central Office, the approval of the Standing Advisory Committee has to be secured. The most important party organ is the Annual Party Conference which consists of delegates from Local Associations and certain Conservative Clubs. The conference determines the programme of the party and also gives an opportunity for stock-taking. However, it is to be noted that it is not the business of the Annual Conference to elect the leadership of the Conservative Party in the House of Commons. That power is left in the hands of the Conservative members of Parliament. Unlike the Labour Party, the Conservative Party does not exercise much control over the Conservative members in Parliament.

The Conservative Party is built around the party leader. He is not elected for a session. Once a party leader is elected, he continues to be so for the rest of his life. However, he can resign earlier if he so pleases. The party leader himself nominates his successor. Reference can be made in this connection to Sir Winston Churchill who continued to act as the leader of the Conservative Party as long as he pleased and ultimately nominated Sir Anthony Eden as his successor at the time of his retirement. A similar thing was done by Baldwin when he retired during the 1930's. The party leader has a lot of authority. He appoints the chairman of the party organisation. He formulates the policy of his party. "His authority is based on free election and the confidence of his supporters. Resolutions passed by the National Union are sent to him for his information and guidance, but no resolu-



tion, however emphatic, binds him on questions of policy. This method suits us and suited the succession of great men we have been proud to have as our leaders."

### Labour Party

The Labour Party is a challenge of the workers to the older parties. The Labour Party is a fusion of affiliated bodies and individual members who joined the local branches of the Party. The National Executive Committee consists of 25 members, out of which 12 are trade unionists, 7 are members from constituency organisation, one member from co-operative society and 5 are women members. In addition, the leader of the party is an ex-officio member. The respective groups are elected each year by their own sections at the Annual Conference of the party and are the chief executive authority of the party for that year.

In 1947, 73 trade unions provided a labour party membership of 4,386,074. Six hundred and forty-nine constituent parties provided 608,487. Six Socialist and co-operative societies provided 45,738 members. The total membership was 5,040,299. Representation at the party conference is arranged in such a way that each affiliated trade union has one delegate for each five thousand members or part thereof on whom fees are paid. The same is the case with the Constituency Labour Party. They vote at the conference by casting one "card" for each one thousand members or part thereof for whom fees have been paid. It will be seen that 6/7ths of the party membership is derived from trade unions, and most of the income of the party also comes from the trade unions.

During the elections of 1945 the Labour Party promised to nationalise the Coal-mines, the Iron and Steel Industry, Fuel and Power, Transport, the Bank of England, and to control investment, to give comprehensive security to ensure full employment, to socialise medicines, to advance generous schemes of housing and education, and, where monopolies were otherwise unchallengeable, to take them over.

The Labour Party has a broad base. It is true that most of its members come from the manual workers, but it has also attracted agricultural workers and members of the middle class. Some of the members are derived from the upper strata of society. The Party includes teachers, businessmen, journalists, civil servants, military men, engineers, clergymen, shopkeepers and farmers.

The Labour Party puts democracy above socialism. It seeks to establish socialism only through democratic methods. It tries to persuade the majority by free and open electoral debates. In this respect, it differs fundamentally from the communists who do not believe in democratic methods.

The professed aim of the Labour Party is to secure for every producer his or her full share in the fruits of industry. It also aims at bringing about "the most equitable distribution of the



Nation's wealth that may be possible." The ideals are to be achieved by the common ownership of land and capital and by the democratic control of all economic activities.

The Labour Party is pledged "to the common ownership of the means of production and the best obtainable system of popular administration and control of each industry and service." This party has been rightly called a *party of levellers*. "It desires a more level system of education and more equality of access to educational opportunities. It desires a more level system of property and more equality in its distribution." According to Barken, it seeks to light Britain forward into a new era of equality with less of a zest perhaps for the technique of social change and less of concern for the question whether or not that technique involves a policy of socialism, and with more, far more of a passion for the reality of social change and the actual coming of equality."

It is to be noted that the Labour Party has not spent all its energy in denouncing capitalism and profiteers. On the other hand, it has produced a programme which is comprehensive, constructive and practicable. The party has worked on the principle that there is a fundamental harmony in all human relations and the best interests of the wage-earners are not in conflict with those of men who earn their livelihood by labour other than those of their hands. Moreover, the Labour Party has put its appeal at spiritual level. It has not completely absorbed itself in controversies regarding open shops, standard of living, minimum wage, 8-hour day, etc. It has stood for industrial democracy which is expected to better the lot of the workers.

According to J. K. Pollock, "As one surveys Labour Party conferences...he cannot fail to admire their democratic quality, their genuine discussion, their representative flavour. They have frequently been involved in perplexities, they are occasionally quite bitter. They have in the long run been representatives of the party, and they have produced a series of party programmes which would do credit to any party organisation in the world."

The Labour Party is more rigidly organised than any other party. The most powerful organ of the party is the Annual Conference which alone can amend the constitution of the party. The Annual Conference consists of delegates elected by the local constituencies, affiliated trade unions, women members, socialist societies, etc. The Annual Conference formulates the policy of the party and elects the National Executive Committee. There is a close contact between the Labour Party in Parliament and the National Executive Committee of the party. Local organisations of the party exist in all important towns. The local organ of the party is the Committee elected by its members and consists of a Chairman, Secretary, Treasurer and a few others. The Committee controls the local party machine. All members have to make regular contributions to the local party fund.



## Liberal Party

The Liberal Party is on the decline. Its following is a residuary collection of electors who cannot find a comfortable home in the Conservative Party or the Labour Party. Much of its present strength comes from the traditional allegiance once given to freedom and harmony as applied to the Church, Foreign Affairs, Tariff, the Franchise and Civil Liberties. Up to 1945, there was a powerful attraction in Lloyd George who was a fighting figure and an advocate of the interests of the land. The decline of the Liberal Party can be explained by facts and figures. In 1906, it had 397 members in the House of Commons. In 1911, it had 271, in 1923, 158, in 1929, 59, in 1931, 37, in 1935, 21 and in 1945, only 12.

In 1945, the Liberal Party got about two and a quarter million votes and won 12 seats. In 1950, it got more than two and a half million votes but won only nine seats, and 319 candidates of this party lost their security deposits. In 1951, the Liberals won only six seats and in 1955, only two.

The Liberal Party occupies the centre between the Conservative and Labour parties. It is more progressive than the Conservative Party but is not prepared to go to the extent to which the Labour Party is prepared to go. It believes in the policy of free trade. However, the party has ceased to represent the dynamic urge in society. Some of its members have gone to the Labour Party and others have left for the Conservative Party. It will be no wonder if the Liberal Party after some time may cease to exist.

According to Buell, the Liberal Party "urges state regulation rather than nationalisation or state management, though (like the Labour Party) it wishes the government to control banks, investments, transport and electric power, and to regulate the coal industry. Its agricultural policy is to secure a more efficient use of land through the provision of small holdings... The 'Liberal way' is in essence a middle way between the 'State Capitalism' of the Conservative and the socialism of Labour."

The Liberals claim that they do not represent any particular class. They represent the nation as a whole. "They believe neither in a regime of private enterprise, nor in one of pure socialism, but in a mixed regime which combines features and elements of both, according to the needs of the nation, and progressively changes the proportion of the elements with the movement of national needs."

Reference may be made to the Communist Party in England. This party is not at all popular in the country. It does not believe in democracy. It stands for class war and the dictatorship of the proletariat. It gets its instructions from Moscow.

Prof. Ernest Barker refers to a story current in England according to which when liberty, equality and fraternity were distributed between England, France and the U.S.A., England came first and got liberty, France came second and got equality and the

U.S.A. came last and got fraternity. If the three gifts of liberty, equality and fraternity were to be distributed among the British parties, the Liberals got liberty, the Conservatives got fraternity and the Labour Party got equality.

### Comparison

A comparison of the English and American party systems shows that there is a lot which is common between the two countries. There is an hierarchy of committees, both local and national. In both countries, there is a host of ancillary leagues and clubs which are always active to help the cause of the party. The parties in both countries act within the limits imposed by law. They do not believe in revolutionary method. However, England has a lesser number of professional politicians than are to be found in the U.S.A. There are not many men and women in England who spend most of their time working for their parties. Although there are political organisations in England, there are no political machines as in the U.S.A. There is no organisation in England which can be compared with the machine-like precision of Tammany Hall. There are no political bosses as such in the American sense.

### SUGGESTED READINGS

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|--------------------------------|--|
| <i>Bailey, Sydney D. (Ed.)</i> | : Political Parties and the Party System in Britain, 1953. |
| <i>Barker, E.</i>              | : Britain and British People (1943).                       |
| <i>Birch, Nigel</i>            | : The Conservative Party, 1949.                            |
| <i>Bulmer, Thomas, Ivor</i>    | : The Party System in Great Britain, 1953.                 |
| <i>Cruikshank, Robert, J.</i>  | : The Liberal Party, 1949.                                 |
| <i>Grimond, Joseph</i>         | : The Liberal Future.                                      |
| <i>Hall, Glenvil</i>           | : The Labour Party, 1949.                                  |
| <i>Mackenzie, R. T.</i>        | : British Political Parties, 1955.                         |
| <i>Morrison, H.</i>            | : Government and Parliament (1954).                        |
| <i>Stewart, M.</i>             | : The British Approach to Politics (1951).                 |
| <i>Williams, Francis</i>       | : Fifty Years' March: the Rise of the Labour Party, 1950.  |



## CHAPTER 8

### LOCAL GOVERNMENT IN ENGLAND

#### Introductory

According to Blackstone, "The liberties of England may be ascribed above all things to her free local institutions. Since the days of their Saxon ancestors her sons have learned at their own gates the duties and responsibilities of citizens."

The system of Local Government in England is the result of a long historical revolution which was mostly unguided and unplanned. It is not possible to trace the history of local bodies in England from the Anglo-Saxon period although many of the local areas today can be traced to the times of Alfred the Great. Suffice it to say that at the beginning of 19th century there was a veritable chaos of local areas, authorities and jurisdictions. At one stage, there were more than twenty-seven thousand different local authorities in England and there was a similar jungle of jurisdictions in the country. Things could not be left to drift for themselves and consequently in 1835 the Municipal Corporations Act was passed. It reorganized the borough administration in England. The next step was taken in 1888 when the Local Government Act was passed. That Act reorganized the County Administration in the country. In 1894 was passed the District and Parish Councils Act which swept away most of the special districts and provided for urban and rural districts. The Local Government Act of 1929 combined some districts and devised a system of rendering financial aid to local bodies. The Local Government Act of 1933 consolidated in a single statute the powers of the local authorities. The Trunk Roads Acts of 1936 and 1946 established a network of national trunk roads under the control of the Ministry of Transport at national expense. The National Health Service Act of 1946 placed hospitals in the hands of ad hoc Regional Boards. The National Assistance Act required the local bodies to provide accommodation for the aged, the infirm, the blind, the deaf and the dumb. The Children Act of 1944 directed the local bodies to arrange for the care of children lacking parental care. The Local Government Boundaries Commission Act of 1945 provided for the establishment of a Boundary Commission to adjust the boundaries of the counties and boroughs. However, this Act was repealed in 1949.

#### Salient Features

There are certain salient features of the system of Local Government in England. In the first place, the English system in its fundamentals is deeply rooted in the past. The Englishmen have been enjoying autonomy in the administration of their local affairs from the Anglo-Saxon period and they have preserved this right



in spite of the fact that the country had to pass through many vicissitudes in the course of centuries. Secondly, the system of Local Government in England has been progressively adapted to shifting conditions from century to century to serve the needs of the people. Changes have been made not only in the functions of the local bodies but in their organisation as well. The local bodies have been adjusted to serve the needs of a highly progressive country. In the third place, although there is diversity in the local bodies which are allowed to manage their own affairs according to their lights, an effort is being made to set up uniformity in certain matters so that the people living under the jurisdiction of various local bodies may not fall below a certain standard laid down by the Central Government. Although the autonomy of the local bodies is not interfered with, there is a tendency to increase the control of the Central Government.

### Organisation of Local Bodies: County

The county is the largest local government division in England. There are two kinds of counties: Historic Counties and Administrative Counties. The Historic Counties are the descendants of the Anglo-Saxon Shires. Although their number is 52, yet they have not been used as areas of local government since 1888. However, they are being used for purposes of election of members for Parliament. There is no County Council for any Historic County.

The Local Government Act of 1888 created 62 Administrative Counties. The governing organ of an Administrative County is the County Council which consists of a Chairman, Aldermen and Councillors. The members of the County Council are elected for three years and the size of the Council depends upon the population of the county. The number of Aldermen is  $\frac{1}{6}$ th of the Councillors. These Aldermen are elected by the members of the County Councils for six years, but half of them retire after every three years. Sitting together, the Councillors and Aldermen elect the Chairman of the County Council. The County Council meets four times a year to transact its business.

The County Councils have a large number of powers. They decide the question of policy and make bye-laws for the county. They supervise the work of the Rural District Councils. They appropriate money. They borrow money with the approval of the Central Authorities. They levy county rates. They maintain county buildings. They provide asylums and reformatories. They practise freedom from pollution. They grant licences, except the liquor licences, which are still granted by the Justice of the Peace. They appoint administrative officials. They supervise elementary and secondary education. They enforce laws relating to contagious diseases, explosives, weights and measures, wild birds, etc. They control the county police through a joint committee of the Councillors and the Justice of Peace. They administer the poor law with the help of Public Assistance Committees. They main



tain roads and bridges. They are responsible for promoting or opposing private bills in Parliament.

The day-to-day administrative work of the county is carried on by a salaried staff consisting of the clerk, the treasurer, surveyor, the director of education, a land agent, an inspector of weights and measures and a health officer. One of the causes of the efficiency of local county administration is the high level of the permanent staff. Their tenure of office is secure and they have not to play politics in order to hold their jobs from year to year.

Committees play an important part in the county administration. Every County Council is required by law to have not less than nine committees, i.e., finance, education, public assistance, public health, housing, agriculture, maternity and child welfare, etc. There are also committees for highways and bridges and weights and measures. Provision is also made for joint committees.

### County Boroughs

A County Borough is a large densely populated town, sufficiently large in size to administer effectively all services likely to come within the scope of local government and to sustain such costs as must be borne locally. Under the Act of 1888, the minimum population required to secure a County Borough status was 50,000. However, exceptions were made in the case of certain well-established towns whose population was less than 50,000. The Act of 1926 raised the minimum to 75,000. It was also provided that the status of a County Borough was to be procured only by means of Private Local Acts. In 1945, a Boundary Commission was established with a general duty and power to adjust from time to time the status and boundaries of the local authorities. The Commission was to work under the general directions approved by Parliament. A population level of 100,000 was prescribed in those directions as the normal minimum for the County Boroughs. The County Borough status is the highest status obtainable by any town or city for purposes of local government. The term 'city' is a courtesy title only which can be conferred in modern times by Letters Patent of the King and is usually conferred only on towns in the first rank of size.

The size of the County Boroughs is very considerable. About a score are below the level of 75,000. The population ranges up to a million or so in the case of largest cities. However, the majority are in the range of population lying between 75,000 and 250,000.

County Boroughs undertake practically the whole range of powers generally available to local authorities. Most of them also undertake some or all of the public utility services such as gas, water, electricity and transport. The powers of the County Boroughs are the widest of any authority and are exercised by the County Borough Council.

## Districts

Urban and rural districts were created by the District and Parish Councils Act of 1894. The number of urban districts is 572 and rural districts 475. Boroughs and urban districts are town units. Borough-status is usually conferred on the larger urban districts. There is no statutory limit. The old boroughs incorporated before 1835 have retained their old status though some of them are small. The new conception of a borough is of a unit between 20,000 and 100,000. The internal constitution of a borough differs from that of an urban district, but there is practically no difference in their powers. An urban district represents the first stage in the development of a community which has passed the size when it may be a village with the status of a parish in a rural district. The inhabitants of an urban district elect a council made up of at least one councillor for each parish within the district. There are no Aldermen in district councils, but the council elects its own chairman and may choose him even from outside. It has been contended in recent times that many of the urban districts are too small for the services they have to maintain.

Within each administrative County, the rural parishes have been grouped into rural districts and each rural district has a council elected by the voters. The council is concerned with sanitation, water-supply, public health, etc. It is also in charge of minor roads. It can grant licences. The importance of the rural district is declining as England is ceasing to be a rural country.

## Parishes

A parish may be a small township or a purely rural area with only scattered hamlets. Its powers are not wide. It may provide land and buildings for public offices and meetings, recreation grounds, street lighting and has the care and protection of foot-paths. It has a valuable right to make representations to the Rural District Council or the County Council in the event of default.

Parishes with a population of more than three hundred have a Parish Council. Parishes with a population of less than 300 do not have any council. The size of a Parish Council varies according to its population. The Parish Council meets three or four times in a year and looks after the local affairs. A Parish Council can provide for public libraries, wash houses and street lamps.

## Boroughs

A borough is an area or unit specially organised for municipal purposes. The distinction between a Borough and a County Borough is a matter, not of form or organisation, but of powers. An ordinary borough is governmentally and geographically a part of the Administrative County in which it lies, but a County Borough is exempted entirely from County jurisdiction. A borough has more powers than an urban district. The authority in a borough



is concentrated in the hands of Borough Council. There is no separation of legislative and executive powers. The council consists of Councillors, Aldermen and a Mayor. Councillors are elected directly by the people for a term of three years. However, one-third of them retire every year. Therefore, there is a municipal election every year in the month of November. Women were made eligible in 1907 and many of them have been elected. Ordinarily, elections are non-partisan, but there is a great rivalry in those boroughs where the Labour Party is strong.

The number of Aldermen is one-third of the number of the Councillors. They are elected by the members of the council for six years. However, one-third of them retire after every two years.

The Mayor is elected for one year by the council, usually from its own members but sometimes from outside. He is not the head of any branch of local administration. He is the presiding officer of the County and the official representative of the borough on formal occasions. He cannot appoint or remove officers, control departments or veto ordinances. It is not necessary that he must be a man of executive ability or experience. It is more necessary that he should be a man of leisure and wealth. He is rarely given a salary and he must be willing to spend a lot of money from his own pocket. Re-elections of Mayors are common.

The Borough Council meets monthly, fortnightly or weekly according to the pressure of work. However, most of the work of the borough council is done through committees which are elected by the council and presided over by chairmen whom the committees themselves select. There are certain statutory committees which have to be appointed by every borough council. The important committees are the Wash Committee, Finance Committee, Education Committee, Old Age Pension Committee, Maternity and Child Welfare Committee. In addition to these, there are other committees which are appointed and maintained at the discretion of the council. The total number of committees varies from seven or eight to twenty or twenty-five. Practically all matters brought up in council meetings are referred to some committee. As the committees discuss the matters thoroughly and are also helped by experts, there is a strong tendency to receive favourably the findings and recommendations of committees.

As regards the powers of a borough council, they fall into three main categories, viz., legislative, financial and administrative. The borough council makes bye-laws or ordinances relating to all sorts of matters subject only to the power of the Ministry of Health to disallow ordinances on health and a few other subjects if the authority finds them objectionable. The council acts as the custodian of the borough fund. It levies borough rates. It makes all appropriations. It borrows money on the credit of the municipality with the approval of the Central Authority. It exercises control over all branches of municipal administration. It employs a staff of salaried officers such as clerk, treasurer, engineer, public



analyst, chief constable, medical officer, etc., who carry on the daily work of the borough government.

As regards the municipal services, a few councils have laid down certain minimum requirements. It is pointed out that they show a tendency towards wider adoption of the competitive test. There is plenty of room for patronage as practised by the chiefs of the departments and the individual members of the council. It is generally admitted that there is less of favouritism and partisan spirit in the services.

There is a close working relation between the higher permanent officials and the council committees. The officials owe their positions to the committees which select them and even after their appointment, the committees maintain close touch with them. The permanent officials attend the meetings of the committees and take an active part in them although they do not have the right of voting.

It is pointed out that the work of boroughs is increasing every day and they are becoming more and more overloaded. There is a danger of borough administration breaking down. There is also a danger of inefficiency coming in the borough administration. However, it may be pointed out that new and quick methods of doing business can enable the existing machinery to go on meeting the demands of the people living within the jurisdiction of the boroughs.

### **Town Clerk**

A reference may be made in this connection to the position and work of the town clerk. He is a permanent official who specialises in his profession and keeps aloof from party politics. Irrespective of the varying fortunes of the political parties in the local elections, the Town Clerk goes on from year to year and has a say both with the old and new burgesses in their work in the municipal field.

The range of his duties is very large. Generally a lawyer, he has to perform many legal duties. He advises the council and the committees on all matters so that nothing illegal may be done. He may be authorised by the council to employ a counsel to appear in the court, but he is expected to prepare all the preliminary papers and make the case ready for the court. When a borough wants to get a private bill passed by Parliament it is the Town Clerk who prepares the first draft of the bill, collects all the evidence, employs barristers to argue the case before the Private Bill Committee and goes to London to watch the whole show personally.

The Town Clerk is the chief permanent official in the borough. It is through him that all the correspondence with the Central Government or other municipalities passes. Under his supervision, his office prepares the various reports which have to be submitted to the Ministry of Health, the Home Office, and other departments of the Central Government. If the borough wants certain



provisional orders to be passed by any department of the Central Government, the Town Clerk sends the application along with the necessary data.

The Town Clerk is expected to attend all the meetings of the council and the committees although a less energetic Town Clerk leaves that work to his assistant or to the committees themselves. He prepares the agenda for the meeting and keeps the minutes in order. He is always at the disposal of the members for any advice or information. Being an expert, he is consulted by the chairmen of the committees on all occasions, specially when the budget is under preparation. He is very busy at the time of election. If a new party comes into power and the members are not acquainted with the routine of borough administration, they require the help of the Town Clerk at every point.

The Town Clerk is the custodian of all the charters, deeds, leases and other legal documents of the municipality. It is his duty to produce them before the council if and when required. He is the one man who is thoroughly conversant with the legislative enactments, provisional orders and judicial decisions relating to English municipal law and practice. His advice is sought whenever any controversial matter comes up for disposal. Generally, the Town Clerk is the ex-officio justice of the peace for the city and in that capacity he performs the duties of attending court, issuing naturalisation papers, authenticating legal documents and making affidavits. In addition to the above, the Town Clerk has to "perform and carry out all other duties which may be required of him by the council or which may hereafter be imposed upon him."

The Town Clerk occupies the key position in the borough. He is the central figure in the local administration. If his relations with the council are cordial and if he is recognised to be a man of parts, the Town Clerk of a big borough makes a very substantial contribution towards the successful administration of the city.

### Government of London

For administrative purposes, London is divided into three parts and those are the City of London, County of London and Metropolitan London. As regards the City of London, its area is about one square mile. It is a corporation of the free men of the city. It governs the city through Lord Mayor and three councils. Those are the Court of Alderman, the Court of Common Council and the Court of Common Hall. The Court of Common Hall is a kind of town meeting. Lord Mayor is chosen by the Court of Common Hall from among the senior Aldermen who have served as Sheriffs. Lord Mayor does not perform any important function. His duty is only to preside over the meetings of the three councils and to represent London on important occasions. He is expected to give a State banquet every year and foot the bill for the same. Most of his salary is spent on official entertainments and the rest of his expenditure has to be incurred by him out of his own



pocket. No wonder, the office of the Lord Mayor suits only a rich person. The official residence of Lord Mayor is the Mansion House. It is stated that the administration of the City of London is efficient. Criticism is levelled against the high position occupied by the Lord Mayor and it is demanded that the same may be taken away from him so that the Chairman of the County of London may find his due place in the politics of London.

As regards the Administrative County of London, it is governed by a County Council consisting of 124 elected councillors and 20 Aldermen. Councillors are elected for three years by the people. On the other hand, Aldermen are chosen by councillors for nine years and 1/3rd of them retire after every three years. 124 councillors and 20 Aldermen sitting together elect a chairman for a year. Keen interest is shown in the elections for the council. Some very capable persons are usually elected to the Council. It is the duty of the London County Council to look after sanitation, public health, housing, education, recreation grounds, public fairs, thoroughfares, streets, railways, parks, etc. It is also in charge of licensing of theatres, regulation and inspection of lodging houses, administration of building laws and maintenance of institutions for the unfortunate.

The sources of income of London County Council are the grants-in-aid, revenue from tolls, rents, fees, licences and local rates. The London County Council has control over its budget. It can borrow money with the sanction of Parliament. Sometimes, sanction of a particular department may also be required.

The London County Council has no Mayor. It has a Chairman who presides over its meetings but otherwise has no powers. Most of the work of the County Council is delegated to its committees. While the higher staff is chosen by the County Council itself, the lower staff is recruited by means of a competitive examination.

The County of London is a federation of boroughs. We are told that 28 Metropolitan boroughs were created in 1899. The size of the boroughs varies. The administration of every such borough is in the hands of the Mayor, Aldermen and councillors, all sitting together. A borough council is in charge of roads, streets, buildings, lighting, cleaning, public baths, public libraries, cemeteries, electric lighting plants, etc. Experience shows that the work of Administrative County of London is done very efficiently.

As regards the Metropolitan Police District, it is an area of about seven hundred square miles and it includes within its jurisdiction the County of London and parts of many other Counties. It was in 1829 that Sir Robert Peel created the Metropolitan Police District. The Police Commissioner appointed by the Crown is the head of the organisation in the district. The appointment of the Police Commissioner is not a political one and he is usually a man of long administrative experience. He is assisted by three Assistant Commissioners. The Commissioner is responsible for the



organisation and discipline of police force. The efficiency of the police is admitted on all hands.

### Comparison of English System with French System

Although the two countries are neighbours, their systems of local government differ fundamentally from each other. It can be pointed out that while the system of local government in England is evolutionary and can be traced back to the Anglo-Saxon period, the case is otherwise in France. The present system of local government in France was settled during the French Revolution. It is the handiwork of Napoleon Bonaparte. No fundamental change has been made during the last 150 years.

While there is uniformity in the system of local government in France, there is a lot of diversity in England. There is a dead level of uniformity in all the Departments, Arrondissements and Communes. No discretion is left with the local authorities to make necessary changes to suit the local requirements.

The system of local government is unitary in France inasmuch as the Minister of the Interior is responsible for the whole show. The system of local government in France is compared to a pyramid. On the other hand, it is pointed out that in England many departments guide and control the work of the local authorities. While the local areas of France are considered to be artificial, the same is not the case with the local authorities in England which can be traced back for centuries.

While in England, the presiding officers of the local councils are elected by the people, in the case of France they are nominated by the executive. This is particularly so in the case of prefects and sub-prefects.

The official control in France is direct. The Minister of the Interior appoints and controls the prefects and sub-prefects. The prefects, in turn, control the Communes and their Mayors. The system of official control is so much centralized in France that it is pointed out that, if Paris sneezes, the whole of France catches cold. In the case of England, the control is indirect. It is exercised through the agencies of grants-in-aid, local inspection, audit, etc. Committees do not play so important a part in the system of local government in France. However, in England a lot of work is done by the committees. Great Britain can claim that her system of local government has served as nursery for her future statesmen and politicians, but such a boast cannot be made by France. On account of too much of official control in France, the people do not feel enthusiastic about the administration of local authorities and generally leave the same into the hands of school teachers, clergymen and other interests.

### Sources of Revenue of Local Authorities in England

There are many sources of revenue of local authorities in England. There was a time when the local authorities derived all



their revenue from local taxes called rates and even today they form a substantial portion of the revenue of the local authorities. However, rates are no longer the sole source of local revenues.

### Rates

A rate may be described a local tax levied at a percentage rate upon the annual value of property beneficially occupied. Occupation may be beneficial even when it is not profitable. There may be some users of premises which amount to beneficial occupation when the property is "empty" in a popular sense. Some classes of property are exempted by law. There is total exemption for agricultural land. There are exemptions for property used by Schools, Churches and Cultural Societies.

Ordinarily, the rate is levied on the occupants and not the owners. However, the owner is made liable in certain cases, *e.g.*, flats. A general discount may be allowed by the authority from the payment of rates. In case of poverty, the local authority has the power to remit the payment of rates.

The rate is levied upon the annual value of the hereditaments. This is the value at which they could be expected to be let from year to year after making allowances for maintenance. The principle is stated in the Rating and Valuation Act of 1924. Valuation for rating has developed into an art of a highly elaborate and technical character. Whole time valuation officers are employed by the local authority. The people engage rating surveyors and expert barristers. The raising of money by means of local rates involves three things, *viz.*, the valuation and assessment of the premises, its collection and the settlement of the amount of local rates from time to time. Before 1924, the work of assessment was carried through the machinery of poor law and the assessment to poor rate was taken as the basis of local rates. Even the collection of local rates was in the hands of the overseers of poor law. However, in 1924 the Rating and Valuation Act separated the rating work from the machinery of poor law.

Both the Counties and Parishes are dependent upon the boroughs and districts for the work of valuation and are bound by the valuation made subject to certain approvals. Both Counties and Parishes are supplied by the boroughs and districts with the money they require out of the rates levied by them. The boroughs and urban districts include the requirements of the County, the rural districts and the Parishes in the local rates realised by them. It is obviously necessary for the rating authorities to know in good time the requirements of other authorities. To begin with, the rating authorities invite information regarding the amount of money required in the next year. The information is supplied by the local authorities concerned. The rating authorities add the money required by them and then levy the total rates. The rate may differ from year to year.



It is to be noted that the initiative rests with the local authorities. Valuation is made by them in the first instance. Constitutional considerations have imposed requirements of independent approval and appeal. Every valuation made by the rating authority requires the approval of an Assessment Committee. The latter is a body of laymen although they are advised by independent experts. In every County Borough a separate Assessment Committee is set up. It is the duty of the Assessment Committees to promote uniformity. The Central Valuation Committee appointed by the Ministry of Health under the Act of 1924 performs advisory functions.

There is no lack of agencies of appeal and correction of assessments. To begin with, an appeal can be taken to the court of Quarter Session. Its jurisdiction is not confined to merely questions of law. In the case of boroughs, an appeal can be taken to a Recorder. On all points of law, an appeal lies from the Quarter Session to Divisional Courts of the High Court. A further appeal can be taken to the Court of Appeal, and the final court of appeal is the House of Lords. Special provision has been made for the valuation of railways, canals, docks, harbours, etc. These are assessed by a special authority called the Railway Assessment Tribunal. Appeal can be taken to the Railways and Canals Commissioners and the House of Lords.

According to the Act of 1924, assessments have to be made for a period of five years. Before 1924, the amount of local rate was determined by the Justices of the Peace but the same is now decided by a resolution of the local authorities. No rate is valid unless the prescribed notices have been given in time. Most of the local authorities impose the rates for a year, but some of them make it for half a year. Provision has also been made for the imposition of supplementary rates.

### **Grants-in-Aid**

Another source of revenue of the local authorities in England is the grants-in-aid given by the Central Government. The first grants-in-aid was given in 1835 but during the course of more than a century, greater emphasis has been put on the system of grants-in-aid. Many arguments have been put forward to justify the system of grants-in-aid. It is pointed out that it is the duty of the Central Government to look after the welfare of all the people living within the country irrespective of the area in which they live. It is for this reason that the Central Government makes its contribution towards the health and education of the people living under the various local authorities. Many local authorities are very poor and consequently cannot afford to spend from their own revenue the huge amounts required for public health, public assistance, housing accommodation, roads, etc. It is also contended that Parliament has deprived the local authorities certain sources of revenue which they possessed before. Although the change is made in the higher interests of the country



as a whole, it is the duty of the Central Government to compensate the local authorities for the loss of revenue to them. Sometimes, the Central Government requires that particular local authority must maintain a certain standard of efficiency in certain matters, but the same cannot be maintained unless and until help is given to that local authority to meet its needs. Moreover, the system of conditional grants gives encouragement to the local authorities to raise their standard.

There are two kinds of grants-in-aid and those are the percentage grants and the block grants. In the case of percentage grants, the Central Government agrees to give grants-in-aid to local authorities on the condition that they fulfil certain conditions and maintain certain standards. When an official of the Central Government testifies that the conditions have been fulfilled, the payment of the money is ordered. In the case of police, grants are equal to 50% of the approved net expenditure. In the case of education, grants vary from 30% to 65% according to the needs and means of the local authority concerned. Grants are also given in the case of roads, bridges, buildings, etc.

Critics point out certain defects in the system of percentage grants. It is pointed out that percentage grants encourage extravagance. As a major portion of the money may be coming from outside without any effort on the part of the local authority, the latter may become careless in its expenditure. The things are bound to be different if all the money is to be raised by the local authorities concerned. Sometimes, the Central Government does not appreciate the needs of a locality and consequently the money granted is not sufficient for the needs of the locality. Percentage grants hit hard the poor local authorities. As percentage grants are given according to the amount of money spent by the local authority itself, the rich local authorities are liable to get more grants and the poor less grants. The grants ought to have been given on the basis of the needs and the financial capacity of the local authorities concerned. However, the prevailing system is defective in this respect. Moreover, it is difficult to determine the needs of a local area and also its financial capacity. It may have been over-valued or under-valued. Prices, wages and costs may also vary from locality to locality. The result is that it is difficult to apply the principle of "to each according to his needs, to each according to his capacity".

The system of block grants or General Exchequer grants was introduced by the Local Government Act of 1929. Every year, the Central Government decides as to how much money it is prepared to give to the local authorities in the form of grants-in-aid. The amount is known as the Exchequer Contribution. When the Exchequer Contribution has been settled, the same has to be distributed among the various Counties and County Boroughs. The share of a County or a County Borough is determined on the basis of its total population, the number of children going to schools, the number of unemployed and the mileage of roads. Obvious-



ly, the share is determined on the basis of its responsibilities. It is the duty of the County Council to distribute the money among the boroughs and urban and rural districts. After retaining about 50% of the grant, the rest is distributed on the basis of population. Provision has also been made for additional and supplementary Exchequer grants.

### Licences

The revenue from licences is not large. It is merely a fraction of the total amount spent by a local authority.

### Trading Revenue

A part of the revenue of a local authority comes from the trading work done by it. Dr. Finer has referred to this part of the activity in his book **Municipal Trading**. Many local authorities supply water, gas, electricity, transport services, etc. The local authorities are not entirely actuated by the profit motive. Ordinarily, they aim at serving the people and charging merely the cost price from the consumers. However, this does not mean that a local authority cannot make any profit. They can afford to do so under the circumstances in which they work. That is partly due to the monopoly they enjoy within their areas. They can also derive all the advantages of large-scale production. If local authorities make some profits from their commercial undertakings, some relief can be given in the form of reduction of local rates. If a loss is suffered, local rates have to be increased proportionately. Every effort is made to make the commercial undertakings solvent.

It cannot be denied that if commercial undertakings have to be worked successfully and profitably, complete and accurate account must be kept of the amount spent on those undertakings. Attempts should be made to recover not only the current expenditure but also a reasonable portion of the capital expenditure.

### Borrowing

A local authority can add to its resources by borrowing. Strictly speaking, it may not be considered as revenue, but it can be considered under the heading of receipts. There are many reasons why a local authority must borrow. Sometimes a local authority has to spend millions on capital expenditure and it is impossible to raise that amount by any means in a year. The scheme may take many years for its completion and its benefit may also be enjoyed for centuries as in the case of sewerage system, etc. Moreover, it is not desirable to charge all the money from the people in any one year. What is actually done is that the whole amount is borrowed by the local authorities and the payment of that is spread over a period of many years. The system is equitable but necessitates borrowing. Sometimes, borrowing may be done to meet an emergency. But on another time, money may have to be borrowed in anticipation of the income in the

near future. Many methods are followed for the payment of money borrowed. It cannot be denied that borrowing has become a necessity and must be allowed in cases of genuine necessity. However, reckless borrowing is bound to be detrimental to the interests of the people in the long run.

### Central Control over Local Authorities in England

A hundred years ago, the local authorities in England were subjected to very little control from London. It is true that a certain amount of national legislation had to be enforced but, broadly speaking, the local authorities taxed, spent, borrowed, built roads and streets and otherwise managed their affairs in any way they pleased. Verily, England was the home of local self-government. However, that cannot be said to be the case today. The control of the Central Government has increased and is always on the increase. This may be partly due to the desire on the part of the Central Government to enforce a certain minimum level of efficiency from the local authorities in the conduct of their affairs, but the fact of control cannot be denied or ignored.

### Judicial Control

Central control manifests itself in many ways. As regards judicial control, the principle of *ultra vires* operates in this connection. Local agents and organs can validly exercise only those powers which have been given to them by the Statutes which created them or by subsequent legislation. If any local agent or organ acts in excess of its powers, the judiciary can be brought into play. Any person who claims to be affected by the exercise of excessive jurisdiction by a local body, may resist the same on the ground that the attempt is *ultra vires*. When such an issue is raised, it has to be determined by a Court of Law. The Court may overrule or uphold the contention. Much depends upon the personal views of the judges concerned.

Every bye-law passed by a local body is required to be reasonable and if any party finds itself in any way injured by any bye-law, it can contend that the bye-law in question is unreasonable. Most of the English judges take a liberal view of the bye-laws when called upon to give their decisions regarding the reasonableness or otherwise of the same. To quote, "When the Court is called upon to consider the bye-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, they ought to be supported if possible. They ought to be, as has been said, 'benevolently' interpreted and credit ought to be given to those who have to administer them that they will be reasonably administered.... A bye-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient, because it is not accompanied by a qualification or an exception which some judges may think out to be there



.....Indeed if the question of the validity of bye-laws were to be determined by the opinion of judges as to what was reasonable in the narrow sense of that word, the cases in the books on this subject are no guide; for they reveal, as indeed one could expect, a wide diversity of judicial opinion and they lay down no principle or definite standard by which reasonableness or unreasonableness be tested."

There is another form of judicial control. There are certain mandatory duties of a local body and if it fails to perform them, the judiciary can be brought into play. The local body can be fined by a court of law. The latter can issue a writ of mandamus requiring that local body to carry out its duty. If no remedy is equally good and injustice would result from refusal, the mandamus must be granted.

Critics point out that judicial control is dilatory and expensive. An aggrieved party may win his case in the lower courts but may lose the same in the end and consequently may be burdened with heavy costs. Judicial control may also be ineffective in certain cases.

### Administrative Control

Administrative control over local authorities in England is an important modern development. Administrative control involves some kind of supervision and direction by an executive department of the Government. The departments which exercise administrative control are the Ministry of Health (which has supplanted the Local Government Board), the Treasury, Board of Trade, Board of Education, the Home Office, Ministry of Agriculture, Ministry of Transport, Ministry of Labour, the Post Office Department, Office of Works and Public Buildings and the Electricity Commissioners. The departmental control has become extensive and all-pervasive. The approval of the Central administration has to be secured to certain appointments. In certain cases, consent to removal is necessary. In a few cases, Ministry of Health is empowered to appoint another agency for the purpose of performing a duty which a local body has failed to perform. Certain laws empower certain ministries to issue Orders-in-Council to fill in details of the skeleton bills. Bye-laws made by the local bodies requires to be approved by the Minister of Health, Home Office or some other minister in charge of a department. The Central Government may frame model bye-laws and forward them to the local authorities for adoption.

Another form of control is the inspection of local services by the central administration. If a minister has to act intelligently, he must have information and the use of inspectors is an easy and effective means of getting information. Inspections began in connection with the administration of poor law, but its principal application at present is in connection with education and police. It is also closely connected with the system of grants-in-aid. His Majesty's inspectors of constabulary and His

Majesty's inspectors of schools decide whether local authorities are maintaining services at the prescribed standard or not. Inspectors are full-time paid officials. Some inspectors make regular visits to local authorities while others are concerned with special investigations. The Local Government Act of 1933 devotes several sections to the holding of inquiries. The costs of the inquiries are paid by the local authority concerned.

Another form of administrative control is in the form of advice. Many circulars are frequently sent from the Central Government to local agents and organs. Numerous advisory bodies have been established by the Central administration and these collect a lot of information which is useful to local authorities. Inspectors also offer advice which agents and organs of local authorities are not likely to ignore.

Several aspects of administrative control are connected with *finance*. As a matter of fact, the power of the purse is the ultimate sanction behind almost all control. There is control in the power of the Government to grant or withhold subsidies. Unless some special power has been secured directly from Parliament, all local loans must be authorised by the central administration. In all cases but a few, local government accounts must be audited by agents of the Central Government. The control is primarily over dishonesty and illegality of local expenditure. The District Auditors have been empowered to disallow illegal expenditure and surcharge the same on those who are responsible for it. They may also surcharge those responsible for loss of revenue to a local authority through their negligence. The High Court has jurisdiction to disallow surcharges on appeal and the Minister of Health has also certain dispensing powers against the sanction of personal responsibility. It is to be noted that boroughs are not subject to audit in respect of that expenditure which is not aided by Government grant.

The Education Act of 1944 and the Water Act of 1945 give a large number of powers of control to the ministers concerned. Formerly, the role of the ministers was passive and not active. Their role was that of a court which acted when moved by an application from a litigant. However, under the above two Acts, ministers are required to exercise an initiative of their own to achieve the policy laid down in the Acts. They may call for action. They may take the initiative in suggesting steps to the local authorities. The Acts supply them for the first time with the power and means to enforce their wishes.

Another form of control is the requirement that the sanction of the appropriate minister has to be taken for all capital expenditure and proposals for borrowing money on capital account. An application for loan sanction involves the submission by the authority of the proposals for which expenditure on capital account is necessary, together with all facts and arguments showing the necessity or desirability of the proposals. While considering the application, the ministry is involved in a judgment



of the proposals on their merits. While the initiative in formulating proposals rests with the local authority, the proposals are brought under the scrutiny of a central department. The central departments maintain technical staff qualified to advise the minister on any technical aspect of the proposals and the local authorities seem to gain, on balance, from an independent scrutiny.

### Legislative Control

The control exercised by Parliament is fundamental and far reaching. It is Parliament which determines the powers and functions of the local authorities. There is no other body from which local authorities can derive their powers. An English local authority can do nothing except that which Parliament expressly authorises it to do. Sometimes the authorisation is given by Acts of Parliament by which local authorities are created, but more frequently those are given by Acts which from time to time embody measures of public policy and assign them to local authorities as agencies to carry them into effect. The authorisation may be in the form of an optional power or a compulsory duty. It may be conferred by a Public General Act or a Local Private Act. Powers or duties may be given to individual authorities by way of ministerial order or other form of subordinate legislation.

Few will suggest that the Central Government should have no powers of control over local authorities. The Central departments are free from local prejudice, are possessed of wide and lengthy experience and in technical matters, including finance, can usually command the services of the best experts. For these reasons, it is desirable that the Central departments should have considerable powers in reserve for use, when necessary. Ordinarily, they should always be ready with advice and assistance to the local authorities. They should encourage them to make the best use of their powers in the interests of their respective communities.

We may conclude with the following words of a great writer: "If we bear in mind the discontinuity of such Central controls as exist in England, and the fact that the local authority is still largely free to settle the means by which the subjects of its public tasks and duties to be achieved, and to erect the kind of organisation best adapted to do so, the sphere of local self-government could still be shown to be large indeed, and possibly larger than that of most other countries."

### SUGGESTED READINGS

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|-----------------------------|--|
| <i>Clarke, J. J.</i>        | : Outlines of Local Government, 1949.                                    |
| <i>Cole, G. D. H.</i>       | : Local Government and Regional Government (1947).                       |
| <i>Finer, H.</i>            | : English Local Government, 1950.  |
| <i>Hadfield and MacColl</i> | : British Local Government, 1948.  |
| <i>Hart and Hart</i>        | : Introduction to the Law of Local Government and Administration (1957). |

- Jackson, W. E.* : Local Government in England and Wales, 1949.  
*Jennings, W. I.* : Principles of Local Government Law (1960).  
*Maud, J. P. E.* : Local Government in Modern England.  
*Robson, W. A.* : The Development of Local Government.  
*Warren, J. H.* : The English Local Government System, 1953.  
*Warren, J. H.* : Municipal Administration.



## CHAPTER 9

### GREAT BRITAIN AND DOMINIONS

The English were able to build up a big colonial Empire during the 17th and 18th centuries. However, the colonial system has worked more in the interests of England than those of the colonies. No wonder, the colonies resented the Navigation Laws and other restrictions imposed on them by the mother country. The result was the American War of Independence, and the ultimate loss of 13 colonies. In spite of that, the old colonial system continued till a fundamental change was brought about as a result of the recommendations of Lords Durham in 1839.

Lord Durham was appointed in 1838 the Governor-General of the North American provinces with special authority to investigate the conditions prevailing in Canada. His acts were vehemently criticised in the British Parliament. The Ministry which had requested him to undertake the mission did not support him loyally. He returned to England humiliated and in official disgrace. He was the victim of the party and personal politics of England. He had "marred a career, but made a nation." On his return to England, he submitted his famous report to Parliament. This report entitles him to the rank of the greatest colonial statesmen in British history. The report "arrested men's attention throughout the Empire in 1839 and has kept its pages fresh and influential to the present day." The Durham Report contained a full description of the situation in Canada and proposed sweeping changes in colonial policy. Examining the history of six Provinces, Lord Durham declared "that the natural state of Government in all these colonies is that of collision between the Executive and the Representative Body." He pointed out that the Executive was irresponsible and asked how long Englishmen at home would tolerate a ministry not in sympathy with the majority of the House of Commons. "It is difficult," he declared, "to understand how any English statesman could have imagined that representative and irresponsible governments could be successfully combined." He also declared that the situation in Canada "was the unavoidable result of a system which stunted the unpopular branch of the Legislature of necessary privileges of a Representative Body." The Assembly in Lower Canada had been conducting a "constant warfare with the executive for the purpose of obtaining the powers inherent in a Representative Body by the very nature of Representative Government."

Fox had said that "the only method of retaining distant colonies with advantage is to enable them to govern themselves." This exactly was the proposal made by Lord Durham. He recommended the introduction of complete ministerial responsibility to the popular chamber. "The Crown must consent to carry on the government



by means of those in whom the representative members have confidence." "We are not now to consider the policy of establishing representative government in the North American colonies. That has been irrevocably done. The Crown must consent to carry on the government by means of those in whom the Representative Body has confidence." "The responsibility to the United Legislature of all officers of Government, except the Governor and a Secretary, should be secured by every means known to the British Constitution. The Governor should be instructed that he must carry on his government by heads of Departments in whom the United Legislature shall repose confidence: and that he must look for no support from them in any contest with the Legislature, except on points involving strictly Imperial interests." According to the biographer of Lord Durham, "That sounds like a truism now but it was the first recognition by a responsible statesman of the principle of self-government in the colonies."

The Durham Report has been called "The Magna Carta of the Colonies", "the most valuable document in the English language on the subject of Colonial Policy," and the "text book of every advocate of colonial freedom in all parts of the globe." The Report is asserted to have "broadened, once for all, the lines of constructive statesmanship in all that relates to the Colonial Policy of England." Of the Durham Report, Wellington stated that "it has now gone round from Canada through the West Indies and South Africa to Australia and has everywhere been received with acclamations."

Lord Durham believed in a federal union of all the British colonies in America. However, he regarded that idea to be premature and, consequently, recommended the union of Upper and Lower Canada into a single colony with a single Government. This had the advantage of putting the English in a majority in the United Colony.

It is true that the British Government accepted frankly and unreservedly the recommendations of the Durham Report, but no action was taken immediately. However, the Act of 1840 united Upper Canada and Lower Canada under a single Government. The Assembly was given larger powers than those possessed previously. The principle of ministerial responsibility was not established within the next few years. A revolutionary change was made in 1847 in the time of Lord Elgin, the son-in-law of Lord Durham and Governor-General of Canada. He chose as members of the Executive Council those members of the French Party who were in majority in the Assembly. This act was very unpopular with the Britishers in Canada. It led to a riot in which the mob attacked the carriage of the Governor-General and set fire to the Parliament building. However, Lord Elgin adhered to his resolution and the principle of ministerial responsibility was thus introduced and has since been constantly maintained. The Canadians were allowed to manage their own affairs without any let or hindrance from the British Government. In 1865, they were allowed



to frame their own constitution and it was embodied in the British North America Act of 1867.

The principles of the Durham Report were followed in other British Colonies also. Responsible government was granted to Nova Scotia and New Brunswick in 1848, the Prince Edward Island in 1851, to New Zealand in 1854 and within the next few years to New South Wales, Victoria, Tasmania, South Australia and New Foundland, to Queensland in 1859, to British Columbia in 1871, to Cape Colony in 1872, to Western Australia in 1890 and Natal in 1893, to Transvaal Colony in 1906 and Orange River Colony in 1907.

Thus the Durham Report became the starting point of the new colonial policy of the British Government. Formerly, the mother-country used to exercise a lot of control over the colonies which the latter resented and which was partly responsible for the loss of the American colonies. The new colonial policy was based on the principle of responsibility and independence of the colonies. It was on account of this policy that the colonies were allowed to have control over their foreign affairs and enter into treaties with other countries. Towards the end of 19th century, there started the policy of calling the Imperial Conferences, to which representatives of colonies were invited. These Conferences met from time to time. As time went on passing colonies were treated more and more on a footing of equality. The result was that General Smuts was included in the War Cabinet as a representative from the colonies during World War I. When the War ended, these colonies were allowed to sign the Treaty of Versailles in their individual capacity. They were given separate representation in the League of Nations. In 1926, Balfour gave his famous definition of the Dominions as self-governing communities which were independent in every way and in no way subordinate to the British Crown.

The *Statute of Westminster* of 1931 merely legalised the position which had already been attained by the colonies through conventions. The statute is a great landmark in the history of the relations between the mother-country and the colonies. It contains a preamble and 12 clauses. In the preamble is explained the constitutional position of the Dominions with respect to Great Britain. According to it, the Crown is the symbol of the unity of free association of the members of the British Commonwealth of Nations. It lays down that if any changes are to be made in the succession to the throne or the royal style and titles, the consent, not only of the Parliament of Great Britain, but also of the Legislatures of the Dominions, is to be secured before any change is actually effected.

Section 1 declares that the Colonial Laws Validity Act of 1865 shall not apply to any law made after the commencement of the Statute by the Dominion Parliament. The result of this was that whatever restrictions existed on the independence of the Dominions were taken away. Section 3 enables a Dominion Parliament to make laws having extra-territorial operation. It emphasises the fact that the Dominions can make laws which affect not only their internal politics, but also those things which are outside their im-

mediate boundaries. The Imperial Parliament has no right to make laws for them even in this sphere.

Sections 5 and 6 are explanatory only. Only Sections 7, 8 and 9 are of great constitutional importance because they put down in definite terms as to how much control is to be exercised by the mother-country over Canada, South Africa, Australia and New Zealand. Section 8 still leaves the power of amending the Canadian Constitution with the British Parliament. Section 9 says that no change will be made in the method of the amendment of the Constitution of Australia and New Zealand. If an Act is passed by the British Parliament which concerns only the States of Australia, the consent of the Parliament or the Government of the Commonwealth of Australia will not be required. Other Sections are not of any great importance.

### After 1931

The Dominions made further progress after the Statute of Westminster. In 1933, Ireland passed the Removal of Oath Act and omitted from the oath of allegiance all references to the English King. Likewise, all references to the King in official documents were deleted. The effigy of the King was removed from coins and stamps. The Union Act of 1934 provided that the Parliament of the Union of South Africa shall be the Sovereign Legislative power in and over the Union. No Act of the British Parliament was to extend to the Union as a part of its law unless extended by an Act of the Union.

In the case of *Moore v. Attorney-General for Ireland*, the Privy Council approved of the abolition of the right of appeal from the Supreme Court of Ireland to the Privy Council. The decision in the case of the *British Coal Corporation v. King* upheld the action of the Canadian Parliament in abolishing appeals in criminal cases to the Privy Council. Under the Union Act of 1934, the authority of the King in regard to the Foreign Affairs could be exercised by the Governor-General. According to Keith, "A Dominion Parliament could validly deal with any royal prerogative connected with matters within its sphere of authority." Consequently, as authorised by the Union Parliament, the Governor-General could exercise the prerogatives of the King in external affairs. As the Governor-General could exercise the prerogatives of the Crown, he could declare neutrality in a war in which England was involved. After the new Constitution of Ireland came into force in December, 1937, Irish neutrality could not be questioned in the eye of law. The actual break-out of the war acted as an eye-opener. On September 2, 1939, the day before Great Britain declared war, the Irish Dail and Senate were summoned to pass two emergency measures. One measure declared that a state of emergency existed, though Ireland was not actually at war. The other conferred on the Government emergency powers to make such provisions as in their opinion were necessary for securing public safety and preservation of the State. In December, 1939, De Valera declared his policy of neu-



trality. He maintained that his declaration of neutrality should not cause surprise because he had already made it clear that he would keep Ireland out of the War in case a European conflict occurred. The Deputy Leader of the Fien Gael Party made a similar statement.

In the case of Canada, the declaration of war was delayed till 10th September, 1939. The Dominion Government wanted the full discussion of the issues at the special session of Parliament "to emphasise their separate national status and independent decision of the Dominion." When the declaration of war was made by Canada, the Prime Minister of Quebec doubted the wisdom of that action. In the case of South Africa, General Hertzog, the leader of the United Party and the Prime Minister, told the Cabinet on September 3, 1939, that he had decided upon a policy of neutrality. The result of this was that there was a split in his Cabinet. Smuts moved an amendment to the resolution of neutrality and the amendment was carried by 80 votes to 67. The result was that the Ministry of Hertzog fell and Smuts was invited to form a new Ministry. That was done and war was declared by Smuts. However, the close voting suggested a strong feeling for neutrality. Even Smuts carried the day by promising that "the Government should not send forces overseas as in the last Great War." Dr. Malan and Hertzog declared in 1940 that South Africa should have a Republican Government so that she "will not again be drawn into the wars of Great Britain."

The neutrality of Ireland put her in some difficulty. The office of the Irish Minister in Berlin fell vacant at the outbreak of the War. Although a new Minister was appointed, it was impossible to get letters of credence from His Majesty, the King Emperor.

A reference may be made to the events of 1936 in connection with the abdication of Edward VIII. According to the preamble of the Statute of Westminster, no amendment could be made in the Law of Succession of England without the consent of the Dominion Parliaments. Baldwin informed the Dominions on November 28, 1936, regarding the question of marriage of Edward VIII with Mrs. Simpson. He suggested three alternative courses, but all of them agreed to abdication. However, an important procedure was followed: "Some, if not all, of his Majesty's Governments in the Dominions exercised their right to communicate with the King, whether in the shape of formal advice or otherwise." Their status in this respect was equal to that of the United Kingdom Government, though the nature and urgency of the crisis made it inevitable for Mr. Baldwin to have played a unique part.

On 10th December, 1936 Edward VIII sent his message of voluntary abdication. On 11th December, the Declaration of Abdication Act was passed and George VI was proclaimed King on 12th December. Canada endorsed the abdication by an Order-in-Council of the Governor-General on 10th December. Australia passed a resolution to the same effect on the same day. The Union of South Africa proclaimed George VI King on 12th December.

The name of the Irish Free State was omitted from the preamble to the Declaration of Abdication Act. On 11th December, De Valera summoned the Dail and presented two Bills. The first Bill removed all the remaining references to the King and Governor-General and dropped the article which provided for the appointment and salary of the Governor-General. In future, all Bills were to be signed by the Chairman of the Dail who was also to summon and dissolve the Dail on the advice of the Executive Council. The second Bill provided that in future all appointments of Diplomatic and Consular Representatives and conclusion of all international agreements were to be made on the authority of the Executive Council. The first Bill took the King and the Governor-General out of the Irish Constitution and the second Bill put the King back for the purposes of external association. For one day Edward VIII was still King in Ireland, while George VI had succeeded him across the Irish Channel.

On 1st May, 1937, was published the Draft of new Irish Constitution to be submitted to the electorate. It was approved of by the people and the Constitution came into force on 19th December, 1937. The names of the King and Commonwealth were omitted from the Constitution. It was stated that "for the purposes of exercise of any executive function of Eire, in or in connection with its external relations, the Government may to such extent and subject to such conditions, if any, as may be determined by law, avail of or adopt any organ, instrument, or method or procedure used or adopted for the like purpose by the members of any group or League of Nations with which Eire is or becomes associated for the purpose of international co-operation in matters of common concern." It follows that Irish Free State will "remain a member of the British Commonwealth of Nations and recognise the King for external purposes, so long as it pleases its Government to do so."

After World War II, the British Government decided to give India independence and in 1947 the Dominions of India and Pakistan were created. Ceylon was also created into a Dominion. With a view to respect sentiments of India, the name of the British Commonwealth of Nations was changed into that of Commonwealth of Nations. When India adopted the new Constitution in 1950 and became a Republic, all references to the King of England were omitted. Pakistan has also become a Republic. Although India is a Republic, she is still a member of the Commonwealth of Nations.

### **Position of Dominions in the Commonwealth of Nations**

It seems desirable to discuss the position of the Dominions in the Commonwealth of Nations. It has already been pointed out that the Dominions are autonomous communities, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as Members of the Commonwealth.



of Nations. Thus, the Dominions are independent to all intents and purposes. Formerly, all Dominions owed allegiance to the British Crown. At present, even this much has also not been insisted upon. Only some sort of association is the only thing that is demanded. Up to 1926, the Governor-General of a Dominion was appointed by the British Government, but after that he is appointed by the King on the advice and consent of the Dominion concerned. It is well known that when Pakistan was created and Jinnah was asked by the British Government as to who should be appointed the Governor-General of Pakistan, he suggested his own name for appointment and it was done. There is no possibility of any conflict between the British Government and the Dominions on the question of appointment of Governor-General as the British Government gives a free hand to the Dominions. Every Dominion is represented by a High Commissioner in London. The British Government has also High Commissioners in every Dominion.

The Dominions enjoy complete independence in matters of legislation. There is no place for the Colonial Laws Validity Act. A Dominion can pass any law it pleases. That law may be against any law of Great Britain. No law passed by the British Parliament is applicable to a Dominion unless and until the law is approved of by the Dominion Parliament. However, one or more Dominions can request the British Government to pass a particular law for them. Even then, the law passed by the British Parliament does not *ipso facto* become the law of the Dominion or Dominions. The same law has to be adopted once again by the Legislature of the Dominion concerned before it becomes the law of that country.

Every Dominion enjoys almost complete control in the judicial field. Formerly, a large number of appeals went to the Judicial Committee of the Privy Council and in this way the British Government exercised some control over the Dominions. However, this control is also losing its importance. The reason is that the Dominions feel that the taking of an appeal to the Judicial Committee of the Privy Council is a sign of inferiority and, consequently, there is a tendency on the part of the Dominions either to put restrictions on the taking of appeals or to abolish them altogether. Ireland stopped the taking of appeals to the Privy Council altogether. When India became independent, appeals to the Privy Council were abolished. Very few appeals come from South Africa. Appeals can be taken from Australia only if the High Court of Australia allows this to be done. It is only from Canada that the largest number of appeals came to the Privy Council.

The Dominions are practically free in their international affairs. They can send their own Representatives to foreign countries and likewise receive the Representatives of other countries. They can enter into separate treaties of their own. In 1922, Canada asserted her claim to enter into an independent treaty and actually did the same with the U.S.A. The treaty was not signed

by any Representative of the British Government. While the Dominions can enter into any treaties they please, they have to avoid treaties against other members of the Commonwealth of Nations. Likewise, if a war breaks out and Great Britain is involved in that war, it is not binding on the Dominions to join it. They may join or they may not join. It is well-known that in 1937 Mackenzie King, the Prime Minister of Canada, and Hertzog, Prime Minister of South Africa, categorically declared that if Great Britain was involved in war, they were not bound to fight. As a matter of fact, the Irish Free State remained neutral throughout World War II. The Dominions had separate representation in the League of Nations and when the United Nations Organisation was created, they were again given separate representation. On many occasions, the representatives from Canada and Ireland voted against the representatives of Great Britain.

According to Schlosberg, "Neither Great Britain nor any of the Dominions knows any authority over itself except its own free national will. The degree and nature of dominion status is equal to that of Great Britain without any qualification or reservation. Whatever, therefore, may be the nature or degree of liberty or independence enjoyed by Great Britain, the same will have to apply to the Dominions". Again, "The British alliance has no personality, can own no property except as a partnership, has no corporate conscience and has only a common will when acting together after consultation and agreement in a definite transaction. It is merely a name indicating not a body corporate like the League nor a confederation like the United States of America, but an association of States free to agree whether or not they will act in a particular manner and for a particular purpose." (*The King's Republics.*)

According to F. R. Scott, "The relationship between the independent states associated through the Commonwealth is not imperial in form but international. Even the common citizenship does not compel uniformity of international action since most of the member States make a distinction in law between their own nationals and those from other parts of the Commonwealth."

It is clear from the above that the Dominions enjoy practically complete independence. There is nothing which forces them to remain members of the Commonwealth of Nations. If any Dominion decides to leave the Commonwealth, there is no force that can compel her to remain within it. However, there are certain reasons which enable the Dominions to remain together. All the Dominions have a parliamentary system of government and this brings them together. In many Dominions, the people are the descendants of Englishmen who once came from England. The ties of blood are a strong factor which bind them together. The use of English as the common language is an additional factor. However, countries like India remain members of the Commonwealth of Nations on account of the advantages to be derived out of it. It is felt that India has everything to gain and nothing to



lose by continuing as a member of the Commonwealth. India owes practically no obligation, but gains on account of her association with other Dominions. There are no sentimental grounds for the continuance of the relationship except the hard realities of world situation.

According to Lord Ismay, formerly Secretary of State for Commonwealth Affairs, "The most striking feature of our Commonwealth family is the diversity between its eight members coupled with their fundamental unity; while perhaps the solidarity of the Commonwealth is not always apparent, it is there and it is very real."

According to L. S. Amery, "It will take time for the Dominions to appreciate fully that the status to which they have attained is not a mere national but an Imperial status. They have been gladly welcomed by Britain to equality with herself, no common, ordinary nation, with a precarious, limited, nominal independence, and a narrow, introverted vision, but a great Imperial nation proud of her achievement, still confident in her strength, still unafraid of great responsibilities, with a temper generous as the breadth of her horizon. They can only realize gradually how superior, in status and dignity, as well as in practical convenience, is their position as compared with that of most of the so-called independent nations of the world outside. They enjoyed every liberty, every privilege enjoyed by the ordinary circle of the Commonwealth; they can count on the co-operation, the support, in peace and war, of their partner States, as well as on the privileges of an almost worldwide citizenship for every one of their citizens. There is no nation now outside the Commonwealth whose status, whose dignity, whose power and security would not have been enhanced by admission to such a partnership. There is none now within the Commonwealth that would not lose immeasurably in every sense, above all in freedom of action and in spiritual growth, in severance from its association." (*Thoughts on the Constitution.*)

### SUGGESTED READINGS

- |                               |   |  |
|-------------------------------|---|--|
| <i>Hall</i>                   | : | The British Commonwealth of Nations.                     |
| <i>Jennings, Sir Ivor</i>     | : | Problems of the New Commonwealth. 1958                   |
| <i>Keith, A. B.</i>           | : | Constitutional Law of the British Dominions.             |
| <i>Marshall, G.</i>           | : | Parliamentary Sovereignty and the Commonwealth, 1959.    |
| <i>Rajan, M. S.</i>           | : | The Post-War Transformation of the Commonwealth.         |
| <i>Wheare, K. C.</i>          | : | The Constitutional Structure of the Commonwealth (1960). |
| <i>Zimmern, Sir Alfred E.</i> | : | From the British Empire to the British Commonwealth.     |

# THE AMERICAN CONSTITUTION

## CHAPTER 10

### SALIENT FEATURES OF THE CONSTITUTION

#### Introductory

The pioneers of modern America were the Pilgrim Fathers who for the sake of their convictions left their motherland to live in a territory where they could obey the behests of their conscience. During the 17th century, many more Englishmen left their country and established themselves there. The Civil War in England did not check that process. By the end of that century, a large number of colonies were established in North America. There was a struggle for supremacy between France and England and in the Seven Years' War, the French power was liquidated and the English became the masters of the whole of North America.

Many causes led to the revolt of the 13 colonies against England. As both sides were uncompromising, there were no chances of any compromise. The 13 colonies issued on 4th July, 1776, the Declaration of Independence in which it was stated that they *"solemnly publish and declare that these colonies are and have the right, to be, free and independent States; that they are absolved from all allegiance from the British Crown and that all political connection between them and the State of Great Britain is and ought to be totally dissolved and that as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce and do all other acts and things which independent States may of right do."*

A Confederation of 13 States was created on 15th November, 1777. It was this Confederacy of 13 States that won the war against England. However, its working showed that there were certain defects in the Confederation. According to Hamilton, *"With the various legislatures, its (Congress) relations were those of a diplomatist. When it sought to creat an army, it needed to ask leave, and to accomplish that end was forced to submit to terms not only ignominious but contrary to reason as well. When it suited a state to furnish a regiment, it claimed and exercised the right to appoint its officers. Military organisation under such conditions was clearly impossible."* Regarding the American Confederation, Prof. Munro says: *"Especially it was weak because it lacked four things which every strong National Government must possess: ability to raise revenues by taxation, to borrow money, to regulate commerce and to provide adequately for the common defence by raising and supporting armies. And these, rather significantly, were the four greatest powers given to the Congress of the United States by the new Constitution which in*



1787 replaced the old articles of Confederation." President Washington referred to the evils in these words: "We are one Nation today and thirteen tomorrow." "There was," to quote Washington again, "the absence of coercive powers."

After the recognition of their independence, the 13 colonies decided to frame a constitution which was to bind them into a stronger union. The representatives of the colonies met at Philadelphia in 1787. The delegates to the Convention have been praised a lot. Jefferson characterised them as "an assembly of demigods." According to Prof. Beard, "It was a truly remarkable assembly of men who gathered in Philadelphia on May 14, 1787, to undertake the work of reconstructing the American system of government. It is no patriotic pride that compels one to assert that never in the history of assemblies has there been a convention of men richer in political experience and in practical knowledge or endowed with profounder insight into springs of human action and the intimate essence of government. It is indeed an astonishing fact that at one time so many men skilled in statecraft could be found on the very frontiers of civilization among a population numbering about 4 million Whites." According to Prof. Farrand, "Great men they were, it is true, but the convention as a whole was composed of men such as would be appointed to a similar gathering at the present time: professional men, businessmen, and gentlemen of leisure; patriotic statesmen and clever scheming politicians. Some were trained by experience and study in the task for them and others utterly unfit. It was essentially a representative body, taking possibly a somewhat higher tone from the social conditions of the time and the character of the leaders."

The Philadelphia convention drafted the constitution for the U.S.A. in 1787 and the same was submitted to the States for approval. The first Congress met under the new Constitution on 4th March, 1789.

### **Salient Features**

(1) The first characteristic of the American Constitution is that it is the supreme law of the country. To quote the constitution itself, "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

(2) The American Constitution is the briefest constitution which any modern State has today. That is due to the fact that the framers of the American Constitution merely laid down the fundamentals and did not enter into the details.

(3) Moreover, the States which joined the American Federation have their own constitutions which were allowed to exist as before. This was helpful in avoiding the bulk of the Constitution.



(4) The Constitution guarantees to every State a republican form of government; protection against invasion and on application of the proper state authority, assistance against domestic insurrection. According to Prof. Beard, "There is still meaning in the old aphorism; 'an indestructible union of indestructible States.'"

(5) The American Constitution emphasizes the sovereignty of the people. The preamble of the Constitution runs thus: "We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States." The contention of James Madison was that the American System was based on "that honourable determination which animates every votary of freedom, to rest our political experiments on the capacity of mankind for self-Government." "With the ultimate powers vested in a huge popular electorate, it follows that civilian supremacy over the military is taken for granted, is indeed pledged by the very form and provisions of the federal constitution itself." According to De Tocqueville, the American people rule in the political world "as the deity does in the Universe."

(6) The American Constitution establishes a representative democracy. It is true that there are still town-meetings in a few communities of New England and referendum, initiative and recall are used in a number of States but on the whole, the political institutions of the U.S.A. are run by representatives who are chosen directly or indirectly by the voters. The voters cannot initiate federal laws. Federal laws cannot be enacted by referendum although the Congress can stipulate that referendum may be used to determine that certain legislative provisions should become effective. Federal officers cannot be recalled. Only on three occasions the voters participate directly in the federal affairs and those are when voting for Representative, when choosing the Senators and when voting for electors to choose the President and the Vice-President. When that is done, all matters of Government are left in the hands of the representatives. Suggestions have been made for the direct participation of the people in the government. It is suggested that the President and the Vice-President should be elected directly and not through an electoral college. It is also suggested that constitutional amendments should be submitted to popular referendum for ratification and not to the State legislatures or conventions as is the case today.

(7) The American Constitution is based on the *principle of separation of powers.* Article 1 provides that all legislative

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1. According to Justice Brandeis, the doctrine of separation of powers was adopted by the Convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but by means of the inevitable friction incident to the distribution of the governmental powers among three departments to save the people from autocracy.



powers therein granted shall be vested in the Congress. Article 2 provides that the executive powers shall be vested in the President. Article 3 states that the judicial powers will be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The inclusive and exclusive language, coupled with the fact that the powers are given in three different Articles, provides the constitutional basis for their separation.

There are many critics and apologists of the system of separation of powers. It is pointed out that in spite of their formal separation, there are many ways by which one branch or the other acquires too much influence. By the use of the radio, movie, press conferences, patronage, etc., the American President has acquired the power to dominate the Congress and exercise undue influence over the judicial decisions. There are others who complain of legislative interference with the executive. There are still others who complain that courts have usurped an authority which properly belongs to the Congress and the President. It is also pointed out that the system produces stalemates and destroys leadership. There is the possibility of the President and the Congress being dominated by different political parties and consequent friction or delay.

The separation of powers was implemented by an elaborate system of *checks and balances*. The Congress is given the power to make laws but those laws become effective only when they receive the approval of the President. It is not always necessary that he will give his assent to every bill sent to him by the Congress. He can exercise two kinds of vetoes. If the bill is sent to him towards the end of a session, he can kill the same by simply not taking any action upon it. This is called the pocket veto. In other cases, the President can veto a bill sent to him by the Congress, but if the Congress passes the same bill again by a two-thirds majority, the bill is passed over the veto of the President. Moreover, the Supreme Court of the U.S.A. has the power to declare a bill passed by the Congress and approved by the President as *ultra vires*. Such a power has been exercised on many occasions. The judges of the Supreme Court are nominated by the President but once nominated, they can put a check on the Congress and the President. The judges can be impeached by the Senate. The Congress can determine the size of the courts and limit the appellate jurisdiction of both the Supreme Court and inferior courts. The President can declare war but he can do so only with the approval of both Houses of the Congress. The President can enter into treaties but those must be ratified by the Senate. There are certain appointments made by the President which have to be confirmed by the Senate. The Congress can impeach the President. The Senate and the House of Representatives are balanced against each other. The Federal Government is set up against the State Governments. To quote Lord Bryce, "The ultimate fountain of power, popular sovereignty, always

full and strong, welling up from its deep source, but it is thereafter diverted into many channels, each of which is so confined by skilfully constructed embankments that it cannot overflow, the watchful hand of the judiciary being ready to mend the bank at any point where the stream threatens to break through."

According to Prof. Ogg, "No feature of American Government, national, state and often local, is more characteristic than the separation of powers, combined with precautionary checks and balances." Again, "Nothing quite like it can be found in any other leading country of the world." According to Dr. Finer, "Not all the objects which the Fathers had in view have been realised, but their main intention, effectively to separate the powers, has been achieved; for they destroyed the concert of leadership in Government which is now so important in the present age of the ministrant politics." Again, the Fathers of the Constitution "separated the executive sources of knowledge from the legislative centre of their applicant; severed the connection between those who ask for supplies and those who have the power to grant them; introduced the continuous possibility of contest between two legislative branches: created in each the necessity for separate leadership in their separate business; and made this leadership independent of the existence and functions of the executive."

According to Prof. Beard, the principle of separation of powers "is indeed a primary feature of American Government and is constantly made manifest in the practices of Government and politics." According to Ogg and Ray, even checks and balances "designed to promote overall equilibrium often operate rather to aggravate than to ameliorate the ill-effects of separation, as for example in the cases of the presidential veto and senatorial assent to treaties."

According to Corwin, "Laterly, the importance of this doctrine as a working principle of Government under the constitution has been much diminished by the growth of presidential leadership in legislation, by the increasing resort by Congress to the practice of delegating what amounts to legislative power to the President and other administrative agencies, and by the emergence in the latter of all the three powers of Government, according to earlier definitions thereof." In *Field vs. Clark* (1892), it was held by the Supreme Court of America that "The Congress cannot delegate legislative power to the President as a principle universally recognised as vital to the integrity and maintenance of the system of Government ordained by the constitution." In 1933, the Supreme Court declared the delegation of legislative authority by the Congress to the President as illegal and void. In 1935, the National Industrial Recovery Act was declared as invalid by the Supreme Court of America partly on the ground that the Congress had by that law delegated to the President its powers to make what amounted to laws and consequently such a delegation of authority violated the principle of separation of powers. However, the recent policy of the Supreme Court has been to allow the executive to have rule-making power provided the terms of the law are reasonably specific.



But it is for the courts to decide whether the terms are reasonably specific or not.

(8) The American Constitution is based on the *principle of compromise*. At the time of the framing of the Constitution, there was great jealousy among the States and that manifested itself in the debates over representation in the new Congress. The large States, with more population, expressed fears that in the new government the small States, which were more numerous, might pass laws detrimental to their best interests. For example, they may be able to pass laws calling for the expenditure of great sums of money, knowing that most of the cost would be borne by the populous States. To secure protection against that sort of legislation, Edmund Randolph of Virginia, a large State, proposed that representation in Congress should be based upon population alone. The smaller States were equally fearful that unless they were protected, the large States might eventually swallow them up. William Patterson of New Jersey, a small State, proposed that representation be according to States, and not people, each State being considered equal regardless of its size. From this conflict emerged the Great Compromise, by which it was provided that there should be two Houses in the Congress. In one House, the seats were to be divided among the States on the basis of population and thus the largest States were to have the advantage. In the second House, the States were to be represented equally, regardless of size, and thus the small States were to have their advantage. These principles were embodied in the House of Representatives and the Senate. To become law, a bill has to pass through both Houses and thus each group of States is given a veto over proposed legislation.

Most of the delegates were agreed with regard to the regulation of inter-State commerce by the national government but the delegates from the southern States objected to the same. If the new Federal Government was given the power to regulate all commerce, there was the possibility of its trying to regulate the slave trade as well. They were not willing to give the new Government this power unless guarantees were written into the constitution protecting the trade in slaves. The result was that a compromise was arrived at by which a clause was written into the constitution prohibiting the Congress from interfering with slavery for 20 years or until 1808.

Although all recognized the necessity of giving to the national Government the power to tax, the delegates from the southern States raised an objection. They objected to having the slaves counted as people when taxes were levied unless they could be counted as people when the number of representatives in the House of Representatives was being set. The delegates from the north objected to counting slaves when determining the number of representatives from the southern States as the Negroes could not vote. A compromise was reached by which each Negro was to be counted as three-fifths of a white person, both in figuring direct taxes and in allowing for representatives.

There were differences of opinion among the delegates with regard to the length of the term of the President of America. Some favoured a long term, as long as life. Others favoured a short time, perhaps as short as a year or two. The compromise finally agreed upon provided that the term of the President should be fairly short (i.e., four years) but he should be eligible for re-election without limit. If a majority of the people desire it, they may have him for life, but at least he will have to come up for re-election periodically, giving the people an opportunity to replace him with some one else if they are not satisfied. However, a convention has developed by which no President is to be elected for the third time.

(9) The American Constitution is a written document. Although it is not possible to ask for a copy of the English Constitution as such, the same does not apply to the U.S.A. The American Constitution is to be found in the documents prepared in 1787, ratified in 1788 and enforced in 1789 and also in the 22 amendments which have been made from time to time. The important constitutional decisions given by the Supreme Court are also a part of the American Constitution.

However, this does not mean that the American Constitution is completely written. Reference should be made in this connection to the important *conventions of the American Constitution*.

(a) The American Constitution provided for an indirect election of the President. The people were to elect the members of the electoral college and the latter was to elect the President. However, as a result of a convention, presidential elections have become direct. The reason is that when candidates stand for election to the electoral college, they give an undertaking to their political parties that if elected, they will positively vote for the party candidate for the Presidency. The result is that when a voter votes for a particular candidate for the electoral college, he takes it for granted that his vote is being cast for his party candidate for the Presidency. (b) The other convention is that no American President will stand for election for the third term. This convention was established by General Washington himself who refused to stand for election for the third time. However, it is to be admitted that this convention was violated by President Roosevelt who was elected for four terms. The violation was due to a very grave international crisis. The 22nd Amendment of the Constitution (1951) provides against the third term of President. (c) Another convention is known as senatorial courtesy. According to this convention, when the President has to make an appointment in a particular State, he has to consult the Senators from that State belonging to his party. It is a matter of history that President Garfield was shot dead as he violated this convention. The result is that this convention is invariably obeyed. Moreover, it is in the interest of the

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1. The convention is that while appointing the members of his Cabinet, the President should take persons from various States and not from a few States only. He should introduce some element of federation into his Cabinet. Main regions of the U.S.A. should get representation.



President himself to follow this convention. By doing so, he can keep the senators in good humour and thereby hope to get their support and approval in matters of ratification of treaties, appointments, etc.' (d) The growth of the Cabinet of the American President is also the outcome of a convention. No such thing is provided for in the American Constitution. (e) The powers and prestige of the Speaker of the House of Representatives are based on usage and convention. (f) It is a matter of convention that the Representative must belong to the constituency from which he is returned. (g) The procedure regarding the conduct of the work of the House of Representatives is based on convention. (h) The weekly interviews given by the President to the Washington press are based on convention. These enable the President to strengthen his position vis-a-vis the Congress. (i) The American Constitution does not provide for a party system. This growth is a matter of convention but it has linked up the executive and the legislatures and thereby brought about a sort of linking up between the two parts. (j) The Steering Committee, the majority floor leader and the caucus are not known to the Constitution.

(10) Like the Indian Constitution, the American Constitution guarantees to the people a large number of rights.' It is stated that the Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof. The people are guaranteed the freedom of speech and press. The right to assemble peacefully and petition the government to redress their grievances is guaranteed by the Constitution. No government can pass a Bill of Attainder and thereby hang a person for treason without trial. Nobody is to be arrested and detained arbitrarily. Except in the case of rebellion or war, the writ of *Habeas Corpus* cannot be refused. Every accused can demand that he must be given a fair trial. He can claim to be defended by a counsel and courts examine the witnesses. Excessive bail is not to be demanded from any person. No person is to be deprived of life, liberty or property without due process of law. No person is to be refused the right to vote on grounds of race, colour, sex or previous conditions of servitude. Full freedom of personal movement and choice of profession are guaranteed. Every person is guaranteed the equal protection of laws. The private property of no person is to be taken away by the government without paying a just compensation. The people are guaranteed the right to keep and bear arms.

In 1964 was passed the Civil Rights Act. It banned discrimination in establishments offering food, lodging, gasoline or entertainment to the public. It prohibited discrimination by employers or unions in hiring, punishing, promotions and apprentice-

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1. Unlike the Speakers of England and Canada, the American Speaker by convention is a party man and leader of the majority in the House of Representatives. His position is similar to that of Prime Minister.

2. According to Justice Stone, "The Constitution expresses more than the conviction of the people that democratic processes must be preserved at all costs. It is also an expression of faith and a command that freedom of the mind and spirit must be preserved, which Government must obey....."



ship training. It authorised the Federal agencies to withhold funds from any programme in which discrimination was found. It authorised the Attorney-General of the United States to file suits to compel desegregation of public schools, parks, playgrounds, libraries and swimming pools. It tightened the procedures in earlier civil rights laws aimed at preventing discriminatory denial of Negro voting rights in Federal elections. It established a new agency to help local communities settle racial disputes on voluntary basis. It extended the life of the Civil Rights Commission up to 1968 and gave it new powers to collect and disseminate information on a national basis. All the provisions of the Act became effective immediately on July 3, 1964 except for the equal employment section which was to go into effect in one year. This Act gave federally-enforceable legal protection to Negroes claiming equal rights in the fields of food, education, public accommodation, employment, public facilities and wherever Federal funds were utilised. President Johnson while signing the Bill made it clear that he was determined to enforce the law even if there was opposition from any quarter.

(11) The American Constitution is a *rigid Constitution*. The method of amendment of the Constitution is given in these words by Article 5 of the Constitution: "The Congress whenever two-thirds of both Houses shall deem it necessary, shall propose an amendment to this Constitution, or, on the application of the legislators of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislators of three-fourths of the several States, or by conventions in three-fourths thereto, as the one or the other mode of ratification may be proposed by the government; provided that no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the ninth section of the first Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

It is clear that there are two methods of proposing amendments and two methods of ratification. However, the method which is usually adopted is that proposals for amendments are introduced in the Congress and the ratification is done by three-fourths of the States' legislators. Formerly, there was no time-limit for the ratification of a bill passed by the Congress. It is stated that in one case the ratification was made after 80 years. However, the law has been changed and it is provided that the whole process of ratification must be completed within 7 years and if it is not done the amendment falls through. It is to be noted that the right of every State to equal representation in the Senate cannot be taken away by any amendment without its own consent.

There has been a lot of criticism of the system of the amendment of the Constitution. It is pointed out that the process is difficult and slow. Within a period of more than 150 years, it has been possible to carry only 22 amendments to the Constitution. Out of these, 10 amendments were made soon after 1789 and may be



considered to be a part of the Constitution itself as originally framed.' Three amendments were made as a result of the Civil War. If we deduct these 13 amendments, the balance is only 9 and that is not an encouraging thing. As the amending process is unwieldy and cumbersome, it is not possible to adjust the Constitution to the changing times. Even the most urgent changes may not be made on account of the difficulty of the amending process. The system results in the tyranny of the 13 States. Even if 37 States are in favour of amendment, the amendment cannot be carried if 13 States decide to oppose the same. It is pointed out that if we were to take the 13 smallest States in the U.S.A., their population may not come up to the State of New York itself, but these 13 States can defy the will of 37 States. It is also pointed out that the number of persons involved in the process of amendment is very small and is estimated to be in the neighbourhood of 7,400. What is worse, they participate in the process of amendment only incidentally, i.e., as members of various legislatures in the country and not in the virtue of any mandate given to them by the country in that behalf. The State legislatures should not have been given the final say in the matter. Their main duty is to make law for the State. Often they are asked to decide the matter which was not before the public when they were elected candidates. "Such a method is criticised because it is costly in its nature and does not provide for that subjective and searching consideration which a change in the supreme law of the land deserves." However, according to Madison, the American method of amendment guards "equally against the extreme facilities which would render the Constitution too mutable and with extreme difficulty which might perpetuate discovered faults."<sup>1</sup>

Many suggestions have been made for the simplification of the amending process. According to some, proposals for amendments should require only a majority vote in both Houses of the Congress and ratification be made by two-thirds of the States instead of three-fourths of the States as at present. Other suggestions propose a simple majority of States or a majority of the people voting by referendum in a majority of the States. Every year, memorials are sent by the State legislatures calling upon the Congress to call a convention for the consideration of suggested amendments. Those are referred to the select committees and soon forgotten.

(12) Another characteristic of the American Constitution is the *doctrine of judicial supremacy*. Unlike England and like India, the Supreme Court of the U.S.A. has the power to declare whether a particular law is *ultra vires* or *intra vires*. From 1789 to 1937, 64 Acts of the Congress out of a total of about 58,000 were declared unconstitutional by the Supreme Court. According to Burgess, the judiciary must play an important part. "Elective government

1. These amendments are described as "the price of ratification" and were made in 1791.

2. According to Munro, the American Constitution "is a living organism, a Darwinian, not a Newtonian affair."



must be party government—majority government; and unless the domain of individual member is protected by an independent, unpolitical department, such government degenerates into party absolutism and then into Caesarism." According to the critics, the American Congress is in a state of perpetual non-age and American people are bound by the Testament made by their forefathers. According to Sir Maurice Amos, the national government ought to be compared not to an infant, an alien or married woman but to an agent to whom certain authorities have been delegated by the sovereign people. The present generation may change the arrangement made by their forefathers and hence it is wrong to say that the people are bound by the testaments of the latter. According to Chief Justice Hughes, "We are under the Constitution, but the Constitution is what the judges say it is." According to James Beck, the American Supreme Court is "the balance-wheel of the Constitution." According to Charles Beard, the Supreme Court is "the crowning feature of the federal system." It is pointed out that the Supreme Court has extended its authority to such an extent that it has become a non-elective super-legislature. The Court has shown undue partiality for property rights and excessive dependence upon legal formulas and consequently the process of social progress has been retarded. The Supreme Court has declared welfare legislation unconstitutional in a number of cases but later on has reversed its decision in response to popular insistence. However, there are very few persons in the U.S.A. who advocate the complete abandonment of judicial review. Many suggestions for reform have been made but none has found favour with the people. Experience shows that the courts may check political departments temporarily, but they are likely to accommodate eventually if pressure is persistent. The future of judicial review depends upon the degree of judicial restraint and the intensity and duration of future crisis.

(13) Another feature of the American Constitution is the *spoils system* which was prevalent in its worst form during the 19th century. According to the system, with the change of the President the servants of the government were also to change. The result was that so long as a particular President was in office, he had supporters in all offices and they did all they could to ensure that the President belonging to their own party was elected or re-elected. The work of the government was conducted on partisan lines. If their party was overthrown in the next elections, they all had to get out and the new President put his own followers into office. "Undoubtedly, there was corruption, inefficiency and irresponsibility. Experienced and worthy public officials were ousted on all sides to make room for political henchmen. The public services became demoralised every time a change of administration took place. The President was harassed almost beyond endurance by place seekers and their friends. The Congressmen tended to become mere solicitors and dispensers of patronage. Administration fell to generally low level, politics itself grew mercenary and corrupt." There was a demand to put an end to this system and



consequently was passed in 1883 the Pendleton Act which introduced the system of competitive examinations for recruitment to government offices. In course of time about 80% of the government jobs came to be filled up by a system of competitive examinations. The percentage fell in the time of President Roosevelt.

(14) America has a *federal form of government*. Unlike Canada, and like Australia, the residuary powers are left with the States and certain specified powers have been given to the Federal Government. The result was that to begin with the Federal Government was very weak and the States were very strong. No wonder the Southern States were able to raise the standard of revolt against the Federal Government and there took place a Civil War in the country between 1861 and 1865. According to Sir Maurice Amos, "The delegation of the powers to the national Federal Government is to be regarded not as a concession made by the several States, but as coming from the people of the United States at large. That is to say that the sovereignty of the individual States is derived independently from the same source. And if it is true that the line of demarcation between the sovereignty of the Federal Government and that of the forty-eight States is to be regarded as so traced that whatever powers that Constitution has not given, either expressly or by implication, to the Union are reserved to the States, that is not because the States have any primacy over the Union, but because a common creator of both, the people, has so willed it."

According to section 8 of Article 1, the American Congress has the power to make laws on the following subjects:—

1. To levy and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of United States; but all duties, imposts, and excises shall be uniform throughout the United States;
2. To borrow money on the credit of the United States;
3. To regulate commerce with foreign nations, and among the several States, and the Indian tribes;

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1. According to Bryce, "All Americans have long been agreed that the only possible form of government for their country is a federal one. All have perceived that a centralised system would be inexpedient, if not unworkable, over so large an area."

2. According to Jefferson, "I consider the foundations of the Constitution are laid on this ground—that all powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States, or to the people. . . . To take a single step beyond the boundaries thus specifically drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition."

According to Prof. Wheare, "What is the fundamental characteristic of the United States considered as an association of States? The answer seems to be that the Constitution of the United States establishes an association of States so organised that powers are divided between a general government which in certain matters is independent of the governments of the associated States, and, on the other hand, State governments, which in certain matters are, in their turn, independent of the General Government."

4. To establish a uniform rule of naturalisation, and uniform laws on the subject of bankruptcies throughout the United States;
5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures,
6. To provide for the punishment of counterfeiting the securities and current coins of the United States;
7. To establish post-offices and post-roads;
8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;
9. To constitute tribunals inferior to the Supreme Court;
10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;
11. To declare war; grant letters of marque and reprisal, and make rules concerning captures on land and water;
12. To raise and support armies but no appropriation of money to that use shall be for a longer term than two years;
13. To provide and maintain a navy;
14. To make rules for the government and regulation of the land and naval forces;
15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;
16. To provide for organizing, arming, and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority for training the militia according to the discipline prescribed by Congress;
17. To exercise exclusive legislation in all cases whatsoever, over such districts (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and
18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the



government of the United States, or in any department or officer thereof.

The following restrictions have been put on the powers of the Congress:—

1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the government for the redress of grievances.
2. "A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."
3. No soldier shall, in time of peace, be quartered in any house without the consent of the owners, nor in time of war but in a manner to be prescribed by law.
4. People will be "secure in their persons, houses, papers and effects, against unreasonable searches and seizures."
5. Trial for capital or other infamous crime will be by a grand jury. No accused will be compelled to be a witness against himself.
6. In all criminal prosecutions, every accuse shall be entitled to speedy and public trial by an impartial jury.
7. In ordinary suits involving an amount exceeding twenty dollars, right of trial by jury will be preserved.
8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.
9. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

It is also provided that no citizen of the United States shall be denied the right to vote on account of race, colour, sex or previous conditions of servitude.

The tenth amendment of the Constitution provides that the powers not delegated to the Federal Government by the Constitution and not prohibited by it to the States, are reserved to the States or to the people.

### Federal Centralization

It is true that to begin with the Federal Government in the U.S.A. was not strong. However, certain factors have increased the powers of the Federal Government. Amendments of the Constitution have increased the powers of the Federal Government. Originally, section 9 of Article 1 of the Constitution prohibited the Central Government to levy direct taxes except under certain rigid conditions. However, the restriction was removed by the 16th amendment which provided that "the Congress shall have

power to levy and collect taxes on incomes from whatever source derived, without appointment among the several States, and with regard to any census or enumeration."

The Supreme Court of the U.S.A. has also played an important part in strengthening the influence of the Federal Government. The Judges of the Supreme Court are appointed by the President and confirmed by the Senate and consequently they come to have a federal bias. No wonder, the Supreme Court has interpreted the Constitution in favour of the Federal Government. This has particularly been done by the doctrine of implied powers which was enunciated by Chief Justice Marshall in these words: "This government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it is now universally admitted. But the question respecting the extent of the powers actually granted has perpetually arisen and will perpetually continue to arise as long as our system shall exist... The powers of Government are limited and its powers are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which enable that body to perform the high duties assigned to it in a manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited but consistent with the letter of the Constitution, are constitutional." To take one example, the Federal Government was given the power to "regulate commerce" with foreign nations and among the several States. By the application of the doctrine of implied powers, the Congress has assumed the authority to control the transportation of goods by rail, water, motor and air, the moving of oil through pipelines, communication of ideas by telegraph, telephone and radio, the moving of passengers from one place to another, etc. The military triumph of nationalism under President Lincoln in the Civil War and the recent growth of tremendous economic and social problems demanding national action for their solution have added to the strength of the Federal Government in the U.S.A.

The changes in the social and economic life of the people have also added to the powers of the Federal Government. The spread of motor transport, railway lines and telegraph have destroyed all State barriers. The United States has become an integrated country both industrially and commercially. The result is that industry, commerce and trade have to be directed on national lines. This factor has strengthened the hands of the Federal Government and weakened the States which are not in a position to deal with the problems arising out of trade and industries.

The growth and organisation of political parties on national lines have weakened State barriers. More emphasis is put on national issues and everything is considered from that point of view.



The grants-in-aid to the States by the Federal Government for purposes of education, roads, State militia, promotion of scientific and industrial research, public health, etc., have added to the federal control over the activities of the States.

The growth of the national press has inculcated common ideals among the people and created a spirit of national unity. This has prepared the people to grant more powers to the Federal Government.

According to Schwartz, "The new federalism in the United States is characterized by the predominance of federal authority. The American social and economic system is more and more being subjected to regulation and control by Washington. The national Government's power over commerce is construed so as to subject even enterprises which have the most remote effect upon the national economy to detailed federal regulation. And, as the authority of the nation in this respect has grown, that of the States has suffered a corresponding decrease, for State action, in the American system, is barred where Federal power inconsistent therewith has validly been exerted. National authority has also been greatly expanded by recent reliance upon the federal power to tax and spend to promote the general welfare. And the position of the States has deteriorated further by the constantly increasing reliance of State Governments upon subventions granted by Washington, which are normally accorded only upon conditions which subject the recipients to varying degrees of federal control. It is the importance of federal grants-in-aid that led an important official study to conclude in 1949, with regard to federal States relations in the American system: 'Prior to 1900, the question was largely a legal problem. Since that time, it has become increasingly an economic problem.' Again, 'Though the American States appear likely to decline even more from the position of independent sovereigns which they possessed upon the founding of the Republic their continuance as separate governmental entities seems assured. It is certainly not yet reasonable to expect their status to become similar to that of an English county or, still less, of a French department. Even if State power continues to decrease and federal control to grow, this American States will continue to possess authority to which no organ of local government in Britain can pretend. They will still possess an initiative in law-making which can be exercised in the absence of federal action in the field. It is they who will still be responsible for the functioning of local administrative and judicial machinery. Education, police, public health, welfare, and a host of other functions appear likely, at least on the local level, to continue to be administered by State officials. It is true that their activities may be subject to ever-increasing federal control. But their role will still be a large one, as compared with English organs of local government. The American States may be under constantly growing federal control, yet it is unlikely that they will ever have to look to Washington in determining their behaviour, as every area of local government in England and Wales

must look to Whitehall and Westminster if it becomes possessed of the desire to embark upon innovations."

According to Potter, "In America the party system and sectionalism, especially that of the South, provide the most effective political resistance to national centralization; and the States which are constitutionally protected from destruction or remodeling provide its focal points. Within the State local government units, though lacking such strong constitutional protection, serve similarly as points of resistance against centralisation. Anything like complete political and constitutional consolidation in America seems impossible.

"The fundamental weakness of decentralizing forces in American politics, however, is that the party organizations are necessarily divided along State lines, which do not correspond to the sectional divisions in the country. Thus the two chief sources of resistance to national consolidation remain imperfectly allied. The difficulty of co-operation among independent and equal local authorities, even when controlled by the same political party, is almost a rule of local government relations; it is certainly true of the relations among the American States. Consequently, when anything of great importance to a region has to be dealt with, the national government is usually called in. It is significant that the Tennessee Valley Authority, the most important governmental development along regional lines in this century, is an example of national administrative devolution, not of inter-state regional co-operation."

"If political systems are to be judged by the neatness of their arrangements, the present American federal system rates rather badly. States and state party organizations prevent uniform centralization, but are incapable of maintaining a really effective governmental decentralization. The result is an unusually confused variety of often inconsistent, administrative and political compromises. There is hope for some order in the devices of co-operative federalism. There is hope for further order in some recent unifying trends in the party system. But government in the United States will always be relatively complicated compared with that in a unitary State like Great Britain. This is the price paid for the nation-State federal system created in the late eighteenth century.

"What was obtained was a unity that might not have been possible otherwise. What is still to be obtained is a greater measure of local autonomy from Washington in the United States than from London in Great Britain. These are important gains, and such considerations have made federalism a common form of government for larger units created from the association of smaller ones; Switzerland, Canada, Australia, for example and possibly some day Western Europe and the world. The hard part of the bargain is that if the time comes for closer association—it is not clear, however, despite the great changes of the last twenty years, that the time has come in America—the rigidity of federal Con-



stitution prevents evolution into a unitary State. Hitler turned a federal republic into a unitary one very quickly, but the task is probably beyond the competence of democratic statesmen. *Federalism is like a heavy mortgage; it makes it possible to build a house, but it is very difficult to pay off.*"

(15) The U.S.A. has a presidential form of government and not a parliamentary one. In that country, the executive is not responsible to the legislature as is the case in England. As pointed out above, the American President and his Ministers do not sit in the Congress. As such no amount of criticism in the Congress can turn out the President or his Ministers. The President is elected for a fixed period and he goes by the calendar. The tenure of office of a Prime Minister in England can be cut short at any time by an adverse vote in the House of Commons, but the American President remains in office for the full period of four years. If the Congress cannot turn out the President, the same is equally true of the President, vis-a-vis the Congress. The members of the House of Representatives are elected for two years and those of the Senate for six years. The President does not possess any power of dissolution. The Congress is independent in this matter.

It has been rightly pointed out that although the American Constitution was originally merely a skeleton framework of government it has become a living document. Although written and frequently amended, it has kept its pace with the American people, and allowed them the maximum of freedom for progress and growth.

(16) According to Ernest Griffith, "The American people have alternately been blamed and praised for their apparent 'reverence' for their Constitution. It is not clear how specific the articulate as well as the sub-conscious expression of this reverence really is as regards the actual content of the great document itself. But the fact of reverence is to be reckoned with...Americans should not be judged too harshly if they attribute much of their prosperity and place in the world to the wisdom of the 'founding fathers'. They may be right. Much of this wisdom lay in the very simplicity of a document that has proved adaptable in a surprising measure." (*The American System of Government*, pp. 19-20.)

### Growth of the Constitution

The American Constitution as originally framed by the Philadelphia Convention was very brief one and consisted of a Preamble and seven Articles. However, the Constitution has been growing

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1. According to Finletter, "This conflict between the executive and the Congress is the most significant fact about the American government today. Unless something is done to cure it, it may prove to be a tragic fact. The difficulty is that the conflict is fundamentally embedded in our system. The power of the popular leader is snatched from institutions which were intended to deny power. The President can put over his policies only by subordinating Congress."

during more than 170 years. Lord Bryce rightly points out that "the American Constitution has necessarily changed as the nation has changed, has changed in the spirit with which men regard it, and, therefore, in its own spirit." Prof. Beard also refers to the growth of the American Constitution in these words: "It is a printed document explained by judicial decisions, precedents and practices and illuminated by understanding and aspiration. In short, the real constitution is a living body of general prescriptions carried into effect by living persons."

(1) The American Constitution has developed in many ways. It has been developed by the laws passed by the Congress and the State Legislatures. The Constitution as originally drafted was merely a skeleton and the details were left to be filled in by the Congress and the State legislatures. The Constitution merely refers to a Supreme Court of America but the details were left to the Congress. Likewise, the creation of the other federal courts was also left to the Congress. The result was that the Judicial Act of 1789 passed by the Congress laid the foundations of the judicial system of the U.S.A. The organisation of the various departments of the government is also regulated by the laws passed by the Congress. In 1946 was passed the Presidential Succession Act with a view to regulate succession to the Presidency. The Constitution authorises the Congress to make all laws which are necessary to carry out the powers assigned to it. By the use of this general power, the Congress has set up a huge defence establishment, created many administrative boards and bureaux, "annexed a far-flung empire, entered into the business of education, banking, insurance, construction, transporting, generating electric power and found authority to regulate the economic and social life of a highly industrialised and complicated nation." Very often, the Supreme Court has not interfered with the interpretation put on the Constitution by the Congress. To quote Beard, "The Supreme Court has declared as a fixed principle that it will show great respect for the interpretations of Congress and will over-rule them when they are clearly and palpably wrong."

(2) The American Constitution has also been developed by the executive. Presidents like Washington, Jackson, Lincoln and the Roosevelt have influenced the Constitution in many ways. The Constitution does not provide for any Cabinet of the President but it was created by Washington and the same has grown in course of time. As a result of the use of the powers given to the President, the President has become the leader in the field of legislation, although such a role was not assigned to him by the letter of the Constitution. According to the Constitution, the Congress alone can declare war but on many occasions, American Presidents have sent American forces to various parts of the world (without any authority from the Congress) to wage war or to be in a position to wage it. The growth of delegated legislation has added to the powers of the executive but such a thing was not provided for in the Constitution. According to Munro, "They



(rules and regulations) are, as it were, the twigs on the branches which have sprung from the main trunk which is the Constitution."

(3) The Supreme Court of America has also played an important part in the growth of the Constitution. This has been done by giving different interpretations to the Articles of the Constitution. It is rightly pointed out that to give a phrase a new interpretation is to give it a new meaning and to give it a new meaning is to change it. It is in this way that the Supreme Court has added to the Constitution and, no wonder, it has been described by President Wilson as "*continuous constitutional Convention*." It is the Supreme Court which added to the powers of the Congress by enunciating the doctrine of implied powers. It has also propounded the doctrine of inherent powers and sanctity of contracts. It is the Supreme Court that has given the President full power in the matter of dismissal. Liberal interpretations have been put on the terms 'commerce', 'armed forces', 'communications', 'transport', etc. According to Munro, "*It has been the work of the Supreme Court, through its power of judicial interpretation, to twist and torture the term 'commerce' so that it will keep step with the procession.*"

According to Chief Justice Hughes, "We are under the Constitution but the constitution is what the judges say it is." According to McBain, "Whatever is enacted by Congress and approved by the Supreme Court is valid even though to the rest of us it is plain violation of an unmistakable fiat of the fundamental law. There is no limitation imposed upon the national Government which Congress, the President and Supreme Court acting in consecutive agreement may not legally over-ride. In this sense, the Government as a whole is clearly a Government of unlimited powers; for by interpretation it stakes out its own boundaries."

(4) The Constitution has also been developed by means of conventions and reference has already been made to them. Those conventions deal with the election of the President, growth of the cabinet, growth of the party system, re-election of the President, senatorial courtesy, etc. According to Dr. Beard, "The most complete revolution in our political system has not been brought about by amendments or by statutes, but by the customs of the political parties in operating the machinery of the government."

(5) The Constitution has grown as a result of the constitutional amendments which have taken place from time to time. In all, there have been only 22 amendments so far. The first ten amendments took place in 1791. The other amendments were made from time to time. As the amending process is a very tedious one, the Constitution has not grown much by this process.

### SUGGESTED READINGS

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|------------------|---|
| Amos, M. S.      | : Lectures on the American Constitution (1938). |
| Beard, C. A.     | : American Government and Politics.             |
| Beck, James      | : Constitution of the United States.            |
| Benson, G. C. S. | : The New Centralisation, 1941.                 |

- Brinkley and Moos* : A Grammar of American Politics (1958).  
*Brogan, D. W.* : The American Political System, 1948.  
*Brogan, D. W.* : An Introduction to American Politics, 1954.  
*Bryce, James* : The American Commonwealth, 1888.  
*Bryce, James* : Modern Democracies.  
*Burns and Peltason* : Government by the People.  
*Clark, J. P.* : The Rise of a New Federalism, 1938.  
*Comfort, Knappa and Shull* : Your Government.  
*Darwell* : The American Political Scene.  
*Dimock* : The American Government in Action  
*Ferguson and McHenry* : The American System of Government.  
*Garner, J. W.* : Government of the United States.  
*Gosnell and others* : Fundamentals of American System of Government.  
*Haskin* : The American Government Today.  
*Horwill, H. W.* : The Usages of the American Constitution.  
*Johnson* : Government in the United States.  
*Laski* : The American Democracy.  
*Munro, W. B.* : The Government of the United States, 1947.  
*Ogg and Ray* : Introduction to American Government.  
*Patterson* : Presidential Government in the United States.  
*Potter, Allen M.* : American Government and Politics.  
*Pritchett, C. H.* : The American Constitution, 1959.  
*Sayle* : An Outline of American Government.  
*Schwartz, Bernard* : American Constitutional Law.  
*Swariz, W. G.* : American Governmental Problems (1957).  
*Stannard, H.* : The Two Constitutions, 1950.  
*Tourtellot, A. B.* : The Anatomy of American Politics, 1950.  
*Tresolini, R. J.* : American Constitutional Law, 1959.  
*Wilson, Woodrow* : Congressional Government.  
*Willis* : Constitutional Law.  
*Willoughby* : The Constitutional Law of the United States.  
*West, W. R.* : American Government, 1939.  
*Zink, H.* : Government and Politics of the United States.  
*Zink, H.* : A Survey of American Government, 1950.



## CHAPTER 11

### AMERICAN PRESIDENCY

According to Prof. Harold J. Laski, "*The President of the United States is more or less than a King; he is also both more or less than a Prime Minister. The more carefully his office is studied, the more does its unique character appear.*" The President cannot share his power, cannot delegate. "He alone is the Chief of State." (President John Kennedy.) It is desirable to discuss the position of such a unique person in the world.

The first thing to be noticed about the American President is that he is the real executive of the country. As a matter of fact, there is no nominal executive in the U.S.A. as the country has a presidential form of government and not a parliamentary form of government. His position is more akin to the Prime Minister of England than to the King of England or the President of France.

Every candidate for presidentship must possess certain qualities. According to the Constitution, "No person except a natural-born citizen or a citizen of the United States at the time of adoption of this Constitution, shall be eligible to the office of the President, neither shall any person be eligible to that office who shall not have attained the age of thirty-five years and been fourteen years a resident within the United States."

It is usually stated that there are three classes of presidential candidates: logical candidates, favourite sons and dark horses. Long political experience is a liability rather than an asset for presidential nomination. Ordinarily, presidential candidates are taken from the so-called pivotal States. That is due to the fact that presidential election is determined not by the plurality of total votes cast by the people but by a majority of the electors chosen. The successful candidate must carry enough of the States to control the elector's majority. He must be strong in those sections of the country which provide most of the presidential electors. It has rightly been stated that every American boy has a chance to become President, if he lives in one of the big, doubtful States.

According to Lord Bryce, "The candidate must be a man known as having made good in some branch of public life—it may be Congress, it may be a State Governor or a Mayor of a great

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1. According to Dr. Finer, the American Presidency has six outstanding characteristics. It is a 'made' executive, but it has grown. It is a 'solitary' not a 'collective' executive. It is popularly elected. It is more than an executive. It is separated from the Congress. It may be tinkered with, but cannot be reformed. (*The Theory and Practice of the Modern Government*, p. 669.)

city, or a Cabinet Minister, or possibly even as an 'Ambassador or a Judge' or an unusually prominent journalist."

According to President Wilson, "A great nation is not led by a man who simply repeats the talk of the street-corners or the opinions of the newspapers. A nation is led by a man who hears more than those things; or who, rather, hearing those things understands them better, unites them, puts them into a common meaning; speaks, not the rumours of the streets, but a new principle for a new age; a man (to whom) the voices of the nation unite in a single meaning and reveal to him a single vision, so that he can speak what no man else knows, the common meaning of the common voice. Such is the man who leads a great, free, democratic nation."

Lord Bryce posed the question as to why great men were not chosen as American Presidents in these words: "Europeans often ask and Americans do not always explain, how it happens that this great office, the greatest in the world, unless we accept the Papacy, to which any one can rise by his own merits, is not more frequently filled by great and striking men.... (Since) the heroes of the revolution died out with Jefferson and Adams and Madison, no person except General Grant has reached the chair whose name would have been remembered had he not been President, and no President except Abraham Lincoln has displayed rare or striking qualities in the chair." This point of view of Lord Bryce has been challenged. It is pointed out that the U.S.A. has produced as many Presidents of rare or striking qualities as England has produced Prime Ministers. The same is true of France. Reference is made to the striking qualities of Roosevelt, Cleveland, Eisenhower and Wilson. According to Hamilton, "The office of President will seldom fall to the lot of any one who is not in an eminent degree endowed with the requisite qualifications.... It will not be too strong to say that there will be constant probability of seeing the station filled by characters pre-eminent for ability and virtue."

The salary and other emoluments of the American President are determined by the Congress and cannot be increased or decreased during the term of office of a particular President. Between 1909 and 1949, the salary of the President was 75,000 dollars a year. In 1949, it was increased to 100,000 dollars a year in addition to 50,000 dollars tax free expense allowance. Separate provision is made in the budget for the travelling expenses of the President, official entertainments and the maintenance of the White House which is the official residence of the President.

The Constitution provides that the President is to be elected for four years. There is no bar for the re-election of the same person for a second time. However, a convention had grown up in the U.S.A. that no person shall be re-elected for the third term. This convention was set up by George Washington himself who was the first President of the U.S.A. and can rightly be called the Father of the Nation. It is stated that in 1875, General Grant was half-



willing to accept nomination for the third time. However, a resolution was passed "that in the opinion of this House, the precedent established by Washington and other Presidents of the United States, in retiring from presidential office after their second term, has become, by universal concurrence, a part of our republican system of government, that any departure from this time-honoured custom would be unwise, unpatriotic and fraught with peril to our free institutions." The result was that General Grant did not stand for the third term. Although Theodore Roosevelt contested the election for the third term, he was defeated. However, this convention was violated in 1940 when Franklin Roosevelt stood for the third term. Not only that, he was re-elected for the fourth term in 1944 although he died in 1945. This violation can be attributed to the fact that there was a great danger to the very existence of the democratic countries from the Axis Powers. However, the convention regarding no-third term was very strong. This convention was given a legal form in 1951 by the 22nd Amendment of the Constitution.

According to the Constitution, the term of office of the President ends on the 20th day of January of the year following every leap year when the successor comes into office. If the President dies before the expiry of four years, the Vice-President steps into his shoes and works as President for the rest of the term. This is what actually happened when President Roosevelt died in April 1945 and he was succeeded by Harry Truman who was at that time the Vice-President of the U.S.A. An Act of 1947 provides that in case of death of Vice-President also, Speaker of the House of Representatives is to succeed.

### Procedure for Election

The framers of the American Constitution spent a lot of time in deciding upon the method of election of the President. Many schemes were discussed before a final conclusion was arrived at. The direct method of selection by the people was ruled out on the ground that it offered scope for demagogues. In the words of Hamilton, that method was favoured which would "afford as little opportunity as possible to tumult and disorder" and not "convulse the community with any extraordinary or violent movements." The method of election of the President by the Congress was not favoured as that was likely to result in making the President a mere creature of the Congress. Moreover, that was opposed to the principle of separation of powers which was favoured by the framers of the Constitution. Ultimately, a system of indirect election was adopted.

The Constitution lays down a simple procedure and gives a lot of latitude to the States. According to it, each State should "appoint in such manner as the legislature thereof may direct" a number of electors equal to the State's combined quota of senators and representatives in Congress. If, for example, a State has two senators and three representatives, it is to choose five electors.

In due course of time, these electors are to meet in their respective States and give their votes in writing for two persons, of whom at least one must not be an inhabitant of the same State as an elector. The ballots are then to be sealed and sent to the Chairman of the Senate who has to open them in the presence of both Houses of the Congress and announce the result. The person receiving the highest votes is to be declared President and the person obtaining the next highest number of votes is to be declared the Vice-President of the U.S.A.

The constitutional provision with regard to the procedure of the election of the President worked only for some time. As early as 1796, it was well understood that most of the presidential electors would either vote for Adams or Jefferson. By 1800, well-defined political parties appeared on the political scene and the presidential electors were chosen on the understanding that they would vote for the nominees of their parties. The result was that "the heart of the original plan was cut within ten years, and never since there has been any attempt to restore it."

As a result of the new convention, the system of election for the President has become direct instead of indirect as originally provided in the Constitution. The presidential electors are chosen by popular vote and they in turn are pledged to vote for the nominees of the national party convention. The electoral college has lost all discretion in the choice of the President and has become an anachronism. According to Justice Jackson, "This arrangement miscarried. Electors, although often personally eminent, independent and respectable, officially became voluntary party lackeys and intellectual non-entities to whose memory we might justly paraphrase a tuneful satire.

"They always voted at their party's call  
And never thought of thinking themselves at all."

Many advantages were claimed for the system adopted. (1) It promised to make the Executive "independent for his continuance in the office on all but the people themselves," since the latter would presumably act through the Electoral College. (2) It would reduce the opportunity for tumult and disorder, since the multiple members of the Electoral College, and their convocation in separate places, would make it difficult for them to communicate their "heats and ferments" to the people. (3) The same "detached and divided situation" of the electors would raise an obstacle "to cabal, intrigue and corruption" since the College would come into being for the sole work of choosing a President and would pass out of existence when its work was done. (4) It would permit the choice of a President to be made by persons who were "most capable of analyzing the qualities adapted" to the station of the presidency, and who would be "most likely to possess the information and discernment requisite to such complicated investigations." According to Hamilton, "the process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in eminent degree



endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honours in a single State; but it will require other talents, and a different kind of merit to establish him in the esteem and confidence of the whole union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States."

Presidential elections are held in the month of November of every leap year. Active election campaign for presidential election is started by the political parties many months in advance. The election campaign has been described as "the greatest political battle in the world." According to Charles Beard, "It is an operation of the first magnitude, putting at stake the ambitions of individuals, the interests of classes, and the fortunes of the entire country. Nearly everybody in America takes part in it, from the President in the White House, busy re-electing himself or helping in the selection of his successor, down to the boot-blacks and garage-boys, who discourse on the merits and demerits of candidates with as much assurance as on the outcome of latest prize fight. The performance involves endless discussion, public and private, oratory, tumult and balloting, the election of thousands of delegates to grand national conventions, the concentration of opinion on a few ambitious leaders, a nation-wide propaganda as the sponsors for various aspirants exhibit the qualifications of their favourites to the multitude, and the expenditure of millions of dollars on publications, meetings, rounding up delegates and seeing that goods are delivered."

As the Electoral College merely records the vote of the people, the question of abolishing it and substituting direct popular election has been raised many time in recent years. It is pointed out that under the present system it is possible for a candidate to become President although he receives less popular votes than his opponent by winning the electoral votes of a few large States by a small margin, while his opponent carries more States with fewer electoral votes by a great majority. In 1888, Harrison won 233 electoral votes while Cleveland won only 168. Yet throughout the entire country, 96,000 more people voted for Cleveland. Cleveland carried the southern States by large majorities, Harrison carried the populace of northern States with large electoral votes by small majorities. Another criticism is that the electoral college unnecessarily complicates and confuses the presidential election and is not understood by many people. The opponents of the reform point out that if the electoral college is abolished, the election officials in some States may be tempted to conduct fraudulent elections, by miscounting the ballots, "stuffing the ballot box," or by preventing some people from voting, knowing that every vote for their favourable candidate would count. If every vote is counted, the States which now have higher voting requirements would be tempted to lower their standards so that more of their residents could vote. The present system still has a



strong appeal to those who think of the presidential election as consisting of 50 separate contests instead of one national contest.

After election, the President has to take the oath of office which runs thus: "I do solemnly swear (or affirm) that I will faithfully execute the office of the President of the United States and will, to the best of my ability, preserve, protect and defend the Constitution of the United States."

Although the President is otherwise irremovable during the term of his office, he can be removed by means of impeachment. The Constitution provides that the President can be impeached for treason, bribery or other such high crimes and misdemeanours by the House of Representatives. He can be tried by the Senate with the Chief Justice of the Supreme Court as the President. A two-thirds majority of the Senate is necessary to convict. Otherwise, during the term of his office, the President is immune from the jurisdiction of ordinary courts.

### **Powers and Functions of the President**

There are many sources of the powers of the President. Some of them have been given by the Constitution, some have come to him by Statutes, some from usages and others from judicial decisions.

#### **Executive Powers**

The President is the executive head of the State. It is his duty to see that all laws are faithfully executed. Secondly, he has been given the power to appoint all administrative officials and judges of the Federal Court. When the spoils system existed in the U.S.A. in its worst form, a new President had a very large amount of patronage in his hands. The followers of the outgoing President vacated their offices and the new President appointed his own supporters to fill them up. This gave a lot of patronage to the American President. However, as there was a lot of agitation against the evils of the spoils system, the system of competitive examinations was introduced and at present about 80% of the appointments are made by means of a system of competitive examinations. Even at present, the higher officers are appointed by the President with the advice and consent of the Senate. These higher officers include the members of the Cabinet, Ambassadors, Ministers, Consuls, Judges of the Federal Courts, members of the various Federal Commissions, etc. In these cases, the approval of the Senate is essential. There have been occasions when the Senate has refused to ratify the appointment made by the President. Some Presidents have managed to keep in office certain persons even when the Senate has refused to ratify their appointments. The method followed is that a person is appointed during

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1. According to Zink, the American President suggests legislation, organizes his followers to pass vital bills, calls special sessions for emergency measures, vetoes undesirable bills, issues executive orders, conducts foreign affairs and appoints Cabinet and other officials.



the recess of the Senate. When the Senate meets it can refuse to confirm the appointment but the appointment can continue till the end of the session. After the end of the session, the same person can be reappointed during the recess following. This process can be repeated. It is stated that President Collidge made use of this technique to keep Charles B. Warren in office as Attorney-General. However, it may be taken for granted that no President will resort to this technique very often as he is liable to annoy the Senate.

Reference may be made in this connection to what is known as Senatorial courtesy. Prof. Munro has described Senatorial courtesy in these words: "Stated briefly, this is the custom of refusing to confirm the nomination of any local officer, such as a federal attorney, post-master or collector of internal revenue, unless the individual Senator or Senators from the State concerned have been previously consulted and have given their approval, provided of course, that the Senators are of the same political party or party faction as the President. To put it more concretely the Republican President must not nominate any one as collector of the port of Philadelphia without first consulting the Republican Senators (if there are any) from that state. If he does so the other Senators, out of courtesy to their Pennsylvania colleagues, are supposed to vote against confirmation."

It is stated that almost invariably the Senate will reject an appointment made by the President if a serious objection is raised by a Senator of the President's Party from the State involved. Reference may be made to the case of Floyed H. Roberts who was appointed by President Roosevelt as a judge of the Federal District Court for Western Virginia. The appointment was objected to by the two Virginia Senators belonging to the party although favoured by the Governor. When the names were sent up to the Senate for confirmation, both the Senators announced that the appointment was personally obnoxious to them, and the result was that the appointment was rejected by the Senate by a vote of 72 to 9. It is well known that President Garfield, who violated this convention, was shot dead.

According to Potter, "The framers of the Constitution defended the power of the Senate to advise on and consent to appointments as a salutary check on the President, but the check soon developed into the system of organized political blackmail known as 'senatorial courtesy'. Under the system, it is customary for the President, when selecting men for all but the highest national appointments, to consult the Senator or Senators of his party from the State in which a nominee is to serve or, less commonly, from which a nominee comes before sending a nomination to the Senate. If there is no Senator of his party from the State, the President usually consults the State party chairman. If the President fails to consult the proper Senators, they may ask their colleagues to vote against confirmation. By 'senatorial courtesy' Senators of both parties usually comply, thus defeating the nomination...."

"In effect, the system usually makes the Senators the real nominators, and the President the person who gives his consent. Indeed, by custom, the Senators often consult members of the House of Representatives who are of the same party about appointments in their districts, so that some nominations are in fact made by Representatives though they are without a shadow of constitutional authority."

The President has also the power to remove. To begin with, it was declared that President alone might remove all officers appointed by him except judges. There was controversy between President Johnson and the Congress and the executive was forbidden by law to remove officers without the consent of the Senate. This law was repealed after two decades. The Act of 1876 provided that first, second and third classes of post-master might be removed only with the consent of the Senate. In spite of that, President Wilson removed a post-master. A suit was brought and the Supreme Court held the Act of 1876 unconstitutional. The result was that the power of the President to remove was limited only in respect of judges.<sup>1</sup> The present position is that the President can remove executive officers at will, but regulatory commissioners<sup>2</sup> having judicial and residuary powers can be protected by statutory limitations on the power of removal.

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1. In this case known as *Myers v. United States*, Chief Justice Taft of the Supreme Court observed thus: "The vesting of the executive power in the President was essentially a grant of the power to execute the laws. But the President alone and unaided could not execute the laws. He must execute them by the assistance of subordinates.....As he is charged specifically to take care that they be faithfully executed, the reasonable implication even in the absence of express words, was that as part of his executive powers he should select those who were to act for him under his direction in the execution of the laws. The further implication must be, in the absence of any express limitation respecting removals, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he cannot continue to be responsible."

2. According to the Hoover Commission Report (1949), "The Independent regulatory Commission is a comparatively new feature of the Federal Government. It consists of a Board or Commission, not even an executive department, and engaged in the regulation of some form of private activity." The type of regulatory authority vested in these bodies falls into two general categories. Some like the Inter-State Commerce Commission are granted broad powers of control over a given industry and others are given exclusive authority to prevent certain abusive practices anywhere in the economy which are conceived to be injurious to the working of a system of free competition. The Federal Trade Commission is empowered to prohibit unfair methods of competition among businessmen engaged in inter-State commerce. According to the Report of the President's Committee on Administrative Management (1937), "These independent commissions have been given broad powers to explore, formulate, and administer policies of regulation; they have been given the task of investigating and prosecuting business misconduct; they have been given powers, similar to those exercised by courts of law, to pass in concrete cases upon the rights and liabilities of individuals under the statute. They are in reality miniature independent governments set up to deal with the railroad problem, the banking problem, or the radio problem. They constitute a headless 'fourth branch of the Government,' a haphazard deposit of irresponsible agencies and unco-ordinated powers."



The President is the commander-in-chief of armed forces. In that capacity, he is authorised to take all those actions which are necessary for the defence of the country and the overthrow of the enemies. The President can send the American forces to any part of the world. This power was used by President Lincoln to suspend the Habeas Corpus even in those States which were outside the scene of hostilities during the Civil War. President Wilson obtained and used powers "commensurate with almost every particle of national life" during World War I. The same can be said of President F. D. Roosevelt during World War II. It was by the exercise of the same power that Mexico was interfered with many a time, Peking was defended in 1900 and Russia was invaded in 1918.

The President directs the armed forces on land and sea. He governs the conquered territories until the Congress provides by law for their Civil Government.

The President dominates the field of foreign affairs.<sup>2</sup> The Constitution gives him the authority to make treaties, appoint diplomats and consuls and to receive foreign diplomatic and consular representatives. As regards the treaties, those must be ratified by a two-thirds majority of the Senate. However, it is not necessary that the Senate will always approve of the treaty entered into by the President. It is well known that although President Wilson signed the Treaty of Versailles of 1919, the Senate refused to ratify the same. With a view to avoid the difficulty of securing senatorial confirmation, Presidents sometimes resort to the practice of entering into what are known as "executive agreements". Such an agreement does not require the consent of the Senate but in actual practice it has the same effect. It was by this method that Haiti, Santo Domingo, the Hawaiian Islands and Texas were annexed. By the "gentlemen's agreement" between President Theodore Roosevelt and Emperor of Japan, Roosevelt agreed to persuade the Congress to kill exclusion legislation and the Japanese agreed to forbid the emigration of coolies. Likewise, a large number of trade agreements have been entered into by the

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1. Today, the limitations a President faces in conducting a campaign in person are more political and practical than legal. From the evidence of past precedents, there is nothing to stop him from taking the field in person. Indeed, by vesting in the President the sole right to determine when an atomic bomb can be dropped, the law now gives him a power of direct command undreamed of in a former day when President Andrew Jackson and Zachary Taylor threatened to ride out and hang a few rebels.

2. According to the Supreme Court of America, "Not only is the federal power over external affairs in origin and essential character different from that over internal affairs but participation in the exercise of the power is significantly limited. In this vast external realm with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation. He makes treaties with the advice and consent of the Senate, but he alone negotiates. Into the field of negotiation, the Senate cannot intrude; and Congress itself is powerless to invade it. As Marshall said in his great argument of March 7, 1800, in the House of Representatives, "*The President is the sole organ of the nation in its external relations and its sole representative with foreign nations.*"

American President with other countries without the consent of the Senate. The appointments of the diplomats and the consuls are required to be ratified by a majority of the Senate.

According to Hyman, "To preserve the existence of the United States as a sovereign entity at international law—to keep the peace or to prepare victory in case of war—the presidential prerogative in the foreign field has been steadily enlarged. Presidents not only formulate foreign policy, they have come to form it. This is so much the case that the character of a foreign policy has often depended on the character of a President. Again, the enlargement of the President's diplomatic prerogative, when joined to his role as a chief executive and as a commander-in-chief, has, as Hamilton admitted it might, placed in his hands a capacity to bring on a state of war that the Congress has been forced to acknowledge. The danger here, as in the action of President James K. Polk on the eve of the Mexican War, has always been great. But in the present epoch of cold wars, half wars, and undeclared wars, it has appeared at times that the President's power to 'make war' has virtually swallowed the Congressional right to 'declare war'."

The American President has the authority to recognise countries and governments. This he does simply by receiving diplomatic representatives of the countries concerned. The President may indicate dissatisfaction with a country by dismissing the representative of the country or asking for the recall of its diplomats or consuls in the United States.

The President can declare war only with the consent of the Senate. However, the President can conduct his diplomatic relations and station his troops in such a way that war becomes inevitable. By means of his speeches, the President can create such a situation that there is no alternative to war. This was done by President F. D. Roosevelt by his speeches against the Axis Powers. Likewise, Wilson facilitated the entry of the U.S.A. into World War I by sending "The Lusitania" to England in spite of the previous warning of the German Ambassador at Washington. However, the President alone has the power to suspend and terminate hostilities.

The Congress has conferred upon the President many powers which can be exercised by him at the time of emergency. President Roosevelt proclaimed a Bank Holiday and prohibited gold and silver exports and foreign exchange transactions under the "Trading with the Enemy Act" of 1917. The definition of the emergency is left to the President. President Roosevelt announced the existence of an "emergency" at the beginning of war in Europe in 1939 and proclaimed a "limited emergency" in the middle of 1941. After the entry of the U.S.A. in the war in December, 1941, a large number of laws were put on the Statute Book which gave the President control over the resources, industrial plants and manpower of the country.



## Steel Industry Case

A reference may be made to the seizure of steel industry by President Truman. America at that time was busy in the Korean War although no formal declaration of war had been made. She had declared a national emergency although no war powers were granted to President Truman as was done in the case of President Roosevelt. America was committed to build up the North Atlantic defence forces. She was committed to supply England with raw steel and thereby relieve the strain on her economy. At that time, giant labour bargained with giant steel for a new contract. There was a deadlock and all efforts to resolve the same failed. The President was informed by the Secretary of Defence that if there was a prolonged strike, the military establishment was likely to be crippled in its defence preparations. The result was that President Truman ordered the seizure of the steel industry. The union men went back to work and the steel companies took the case to the courts. Three judges of the Supreme Court of America upheld the action of the President. They admitted that the action of the President was extraordinary but the times in which the action was taken were also extraordinary. In seizing the steel industry the President had done nothing more than ensuring the means by which he had faithfully executed the law the Congress had recently enacted affecting the diplomatic and military efforts of America. However, six judges of the Supreme Court held that the action of the President was illegal.

The official report issued in 1937 described the position of the American President as the administrative head in these words: "The President is the General Manager of the United States. The very purpose of an Executive Department under the Constitution is to centre upon a unified and powerful executive responsible for a co-ordinated policy of administration and its efficient execution. Congress, by its very nature, is incapable either of doing administrative work or of holding accountable in any effective way the many officers or agencies engaged in administration. The President's duties and responsibilities in this field are not routine in nature but carry with them broad discretionary powers."

## Judicial Powers

The President has the power to grant pardons and reprieves. This power is exclusively exercised by him and does not require any consent. A pardon is a release from liability from punishment. It may be absolute or conditional. If it is absolute, the accused is completely exonerated. If it is conditional, it leaves certain obligations and disabilities on the offender. A reprieve merely postpones the execution of a penalty. Such an action may be taken on humanitarian grounds or in the expectation that new evidence may come in. The President can pardon offenders against the federal laws except those who have been impeached. He has no authority to grant pardon against the laws of the States. Sometimes, an amnesty is granted by the President. Amnesty is



a group pardon given to a batch of offenders. President Jefferson set free all those convicted under the Sedition Act of 1789. President Washington granted nine pardons in all but President Truman signed 500 civil pardons and 9,000 military pardons in 1952 alone.

### Legislative Powers

Although the President is the head of a presidential form of government and does sit in the Congress, he still possesses a lot of legislative powers. His powers are so many that he is described to be a leader in the legislative field.

According to Roosevelt, "In theory, the executive has nothing to do with legislation. In practice, as things now are, the executive is or ought to be peculiarly representative of the people as a whole. As often as not the action of the executive offers the only means by which the people can get the legislation they demand and ought to have. Therefore, a good executive under the present conditions of American political life must take a very active interest in getting the right kind of legislation."

The Constitution provides that the President "shall from time to time give to the Congress information of the state of the Nation and recommend to their consideration such measures as he shall judge necessary and expedient...." This provision is the basis of the power of the President to send messages to the Congress. Presidential messages to the Congress play an important part. Sometimes, there are directives to suggest the necessity of a certain legislation and the desirability of passing the same. In such cases, a bill is introduced on the lines of the recommendation of the President. Sometimes the object of a message is to influence the public mind. Its objective is to rouse the public interest all over the country and provoke the people to send letters and telegrams to Congressmen forcing them to pass a particular measure. Such a message is a kind of sermon to the American people and it gets the headlines of the newspapers. Franklin Roosevelt addressed a series of "Fire-side-chats" to the people over the radio. These addresses were on different subjects and sometimes served as "trial balloons." The object is to find out the reaction of the people to certain proposals made by the President. Sometimes a message is intended for foreign consumption. "Sometimes the President's message lays down a principle which comes to be universally accepted as fundamental and thus becomes almost as much a part of organic law of the land as if it had been incorporated in the Constitution itself." It was by means of a message to the Congress that President Monroe enunciated the famous Monroe Doctrine which states that "the United States would not tolerate further extension of European domination and influence in the western world." The object of President Roosevelt's messages during 1941-45 was to let the European powers understand the attitude of the United States towards World War II.



The net result of presidential messages is that the actual legislation passed by the Congress is influenced to a great deal by those messages. There is so much of discussion on these messages in the newspapers and on the platform that no Congress can dare refuse them. It has to pass the laws asked for by the President. The President is considered to be the leader of the country and as such has the backing of the people and the people expect that the Congress will pass the laws which the President asks for.

Reference may be made to what is described as "presidential lobby". As the head of the executive of the country, the President has the most powerful lobby in Washington at his command. A large amount of facts and figures can be collected by the executive to support a particular measure which the President wants to be passed by the Congress. As the opponents of the measure do not have such facilities of collecting facts and figures, they may not be able to meet the arguments of the executive and there is every possibility of the latter's point of view being carried and the desired legislation passed. It has been therefore stated that the President can initiate, promote and under favourable conditions virtually assure the enactment of legislation.

The President has also the *power of veto*. According to the Constitution, "Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes law, be presented to the President of the United States; if he approves he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law."

Many a bill has been passed by the Congress and sent to the President for approval. It is not binding on the President to approve them in every case. He has been given two kinds of veto power. If a bill is sent to the President towards the close of the session and he does not want to give his consent to it, he can kill the bill by merely sleeping over it. By mere inaction, he can kill the bill. This is called the pocket veto. The other kind of veto is that he can refuse to give his consent to the bill and return the same to the Congress. If the Congress is very particular about that measure, it can pass the same once again by a two-thirds majority and send it to the President for his approval.



In such a case, even if the President refuses to give his assent to the bill, the bill is passed over the veto of the President. However, it is to be noted that the bills are rarely passed for the second time by the Congress. This is particularly due to the fact that the Congress is always short of time and finds it difficult to finish its normal work. Although between 1789 and 1925, the veto power was used 600 times, it was reversed by a two-thirds majority only on 36 occasions. This power of veto has not been exercised in the same way by all the Presidents. President Jackson is said to have set a record by vetoing twelve bills.

It is to be noted that the veto power does not apply to proposed constitutional amendments. Moreover, the bill must be vetoed as a whole and not in part. The President must either approve the whole bill or reject the whole.

It has rightly been pointed out that the influence of the President is exercised not only by actually using his veto power but also by threatening to use the same. When a measure is being discussed in the Congress, the President can indicate his own attitude towards the bill, either openly or privately and there is every possibility of the bill being dropped.

On the power of veto, Prof. Munro remarks thus: "What was intended, therefore, as a weapon of executive self-defence has developed into a means of guiding and directing the law-making authority of the nation. It has been expanded into a general revising power, applicable to all measures of whatever sort. Enabling each President to set up his own judgment to that of the legislature, it has developed the presidency into something like a third chamber of Congress, thus making the chief executive a more active figure in legislation than he was originally intended to be." According to Dr. Finer, "Here is a power which costs no expenditure and which can be used with a fair prospect of success and no punishment. A long and arduous legislative battle in the country and the legislature may be lost by any group of Congressmen in the time it takes to write 'No' and a few phrases of explanation."

Potter points out that in 1936, about one in six regular vetoes of popular bills and about one in 80 regular vetoes of private bills were over-ridden. Of 1,190 regular vetoes delivered by the Presidents before President Eisenhower, 71 were over-ridden, just over half of them during the term of three Presidents. Fifteen of the 21 regular vetoes of President Johnson were over-ridden. Nine of the 371 regular vetoes of President Franklin Roosevelt were over-ridden. Twelve of the 180 regular vetoes of President Truman were over-ridden. The Congress reduces the effectiveness of the veto power by the President by putting "riders" on bills which the President may feel unable to veto. In 1943, the Congress put a rider on an appropriation bill specifying that no money was to be paid to three government employees whom certain Congressmen disliked. President Roosevelt condemned the riders but all the same had to sign the bill. In 1946, the Supreme



Court held that the rider was an unconstitutional bill of attainder. Thus the controversy ended.

Certain Presidents have claimed the right to legislate on their own. Presidents Lincoln and Johnson claimed the right to determine the Southern "reconstruction" policy of the national government. During the Second World War, President Roosevelt was annoyed by the success with which the "farm block" obstructed the price control legislation in the Congress and declared thus: "In the event that the Congress should fail to act and act adequately, I shall accept the responsibility and I will act." His threat had the desired result. President Truman ordered the putting of the private steel industry under government control during a labour dispute in 1952. He refused to follow the procedure laid down in the Taft-Hartley Labour Management Relations Act and after having failed to settle the dispute in his own way, he ordered the seizure on his own authority. In the case of *Youngstown Sheet and Tube Co. v. Sawyer*, the Supreme Court held that the order of the President was invalid. Justice Black observed thus: "The President's power to see that the laws are faithfully executed refutes the idea that he is to be a law-maker. The Constitution limits his functions in the law-making process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. . . . The founders of this nation entrusted the law-making power to the Congress alone in both good and bad time." According to Potter, "The doctrine of independent legislative power is indeed dangerous, but the frequent conflict between the President and Congress leads to dangerous situations. A fair deduction from the various opinions in the *Youngstown* case is. . . . that the President with regard for the niceties of constitutional language may in fact do a great deal on his own without interference from the Court. The history of the American Presidency leaves no doubt that it has been an office of expanding power. Only by more effective presidential-congressional co-operation can the growth of independent presidential power be prevented."

The Constitution empowers the President to call special sessions of the Congress. Such a session may last for a few days or may continue till such time as the next regular session starts. The President can ask the Congress to sit for a longer period in the regular session so that important legislation may be disposed of and if the latter refuses to do so, he can resort to the method of calling a special session. The threat of a special session can bring the members of the Congress to their senses. While calling a special session, the President has to issue a proclamation and in that he has to tell the purpose of the special session and the matters to be dealt with by that session.

The President has come to possess a lot of legislative powers by means of "executive orders" which can be compared to the system of delegated legislation. As there is too much of work in the Congress and the same cannot be disposed of in time, the Congress authorises the President to issue executive orders to supple-



ment the provisions of law. As the number of executive orders issued by the President is very large, his influence in the legislative field has increased tremendously.

The American President enjoys a large number of discretionary powers which even the courts have not restricted. It is very rare that the President and the Supreme Court clash. However, on one occasion there was a conflict between Chief Justice Marshall and President Jackson. The latter did not like a decision given by Marshall, C. J., and he is stated to have remarked thus: "John Marshall has made his decision; now let him enforce it."

As the leader of his party, Mr. President can expect to get anything done from the Congress. This is particularly so when the same party has a majority in the Congress and has also its own nominee in the White House.

Regarding the share of the American President in legislation, McBain observes thus: "We elect the President as a leader of legislation. We hold him accountable for what he succeeds in getting Congress to do and in preventing Congress from doing. Once in office, except for consideration of the patronage which is politics rather than executive business, the time and thought of the President and his cabinet are devoted far more largely to legislative than to executive matters. This is true even when Congress is not in session." According to President Taft, the American President "is himself a part of the legislature, in so far as he is called upon to oppose or disapprove acts of the Congress. A President who took no interest in legislation, ignored his responsibility as the head of the party for carrying out ante-election promises in the matter of new laws, would not be doing what is expected of him by the people."

### President and Constitution

Regarding the duty of the President to preserve the Constitution of the country, President Lincoln observed thus in 1864: "My oath to preserve the Constitution imposed on me the duty of preserving by every indispensable means that government, that nation, of which the Constitution was the organic law. Was it possible to lose the nation and yet preserve the Constitution? By general law, life and limb must be protected, yet often a limb must be amputated to save a life, but a life is never wisely given to save a limb. I felt that measures, otherwise unconstitutional, might become lawful by becoming indispensable to the preservation of the Constitution through the preservation of the nation. Right or wrong, I assumed this ground and now assert it, I could not feel that to the best of my ability, I have ever tried to preserve the Constitution, if to save slavery or any minor matter, I should permit the wreck of the government, country, and the Constitution altogether."

### Estimate

The American President is a very popular figure in his coun-



try. As such, there are millions of photographs of the President. It is stated that one Washington firm had about 50,000 negatives of President Wilson alone. A large number of letters come to him from every nook and corner of the country and their number runs to thousands every day. However, only a few of them are placed before him for disposal and the rest of them are dealt with by his Secretary. A large number of persons come to the President. It is stated that in the time of President Harding, about 2½ lakhs of persons came to see him. According to Haskin, "Unless the President learns the trick of gripping the visitor's hand before the visitor grips his, he is certain to have a badly swollen arm."

The American Presidents have always acted in a constitutional way. According to Lord Bryce, "The fear once loudly expressed that the President might become a despot has proved groundless. .... The principles of the American Government are so deeply rooted in the national mind that an attempt to violate them would raise a storm of disapproval." It is stated that "*the President is the nearest and the dearest substitute for a royal ideal which the American possesses.*"

According to President Wilson himself, "The nation as a whole has chosen him (President) and is conscious that it has no other political spokesman. He is the only national voice in affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces can easily overpower him. His position takes the imagination of the country. He is the representative of no constituency, but of the whole people. When he speaks in his true character, he speaks for no special interest. If he rightly interprets the national thought and boldly insists upon it, he is irresistible; and the country never feel the zest of actions so much as when it has President of such insight and calibre. Its instinct is for unified action and it craves a single leader." (*Congressional Government in the United States*, p. 68.) Again, "It is the extraordinary isolation imposed upon the President by our system that makes the character and opportunity of his office so extraordinary. In him are centred both opinion and party. He may stand, if he will, a little outside the party and insist as it were upon the general opinion. It is with the instinctive feeling that the country wants (such a man) that nominating conventions will often nominate men who are not their acknowledged leaders, but only such men as the country would like to see lead both its parties. The President may also, if he will, stand within the party counsels and use the advantage of his power and personal force to control its actual programme. *He may be both the leader of his party and the leader of the nation or he may be one or the other. If he leads the nation his party can hardly resist him.*"

According to Brogan, "The President has been a third House; he has become entitled in custom, as he was always in law, to-



set his opinion against that of the legislature, even in fields in which the legislature is theoretically competent."

According to Sidney Hyman, the American President "does more than propose ground rules for American military, diplomatic and economic policies. He makes the same sort of proposals to the other nations in the Western alliance. The President not only is America's chief administrative officer, he also co-ordinates a net-work of programmes shared in by foreign executives. He not only can veto the work of the Congress. The threat of his veto hangs heavy over the heads of the foreign assemblies. He is the party leader, the guide and interpreter of public opinion, the keeper of the conscience, the ceremonial head, the disciplinarian and the source of clemency. He is all these things and more, not only for Americans from whom he derives his authorities, but for a vast non-voting world constituency." Again, "The American President not only reigns. He also rules. He is and does. Here is a basic cause of tension. He combines the sentimental aura of the Crown with the work-a-day labours of a unitary prime ministership. He suggests the quality of timelessness. But he is also a force in continuous motion. He sifts, defines, chooses, from among alternatives, and he exercises his own will to decide what the national purpose shall be and how it shall be met. And it is because he is exalted in his institutional aspect that he has a greater distance to fall as an Executive. It is felt that if only he will use right reason, he can share every problem, that if he doesn't solve it, the fault is not in the problem but in his moral failure. It is felt, too, that he actually has a free hand to do what we expect of him at home and abroad; if he does not use that hand as we wish him to, the cause, once again, is his moral failure. That he is bound by law and custom to work in a controlled and predictable way; that he does not have God's power to make a crab walk straight; that the pressure of age-old historical forces can narrow the range of his alternatives to a single brittle option all too often are overlooked." (*The American President*.)

Prof. Laski points out that the American President is the head of the national life. He is the accredited spokesman of the nation and as such he has to perform a large number of functions which are both delicate and fatiguing. He may "one day be accepting a portrait of George V for the National Gallery at Washington. He may have to greet the daughters of the American Revolution on Tuesday, and the National Education Association on Wednesday. Washington's birthday calls for one kind of speech and Jefferson's birthday from a Democrat, for another. There may be a message to the Boy Scouts, a royal visitor from another country, the dinner to the judiciary, the necessary entertainment of diplomatic corps." (*The American Presidency*, p. 37.) No wonder, it is stated that "in the range of his power, in the immensity of his influence and in his special situation as at once the great head of a great State and his own Prime Minister, his position is unique."



A reference may be made to what President Roosevelt described as the *Jackson Lincoln theory of Presidency*. To put it briefly, it means this: "Occasionally great crises arise which call for immediate and vigorous executive action, and that it is the duty of the President to act upon the theory that he is the steward of the people and that the proper attitude for him to take is that he is bound to assume that he is legally right to do whatever the needs of the people demand unless the Constitution or the laws expressly forbid him to do it."

According to Wilson, "*The Presidency has been one thing at one time and another at another time, varying with the man who occupied the office and with the circumstances that surrounded him.*" Thus, there were strong Presidents like Jackson, Lincoln and the two Roosevelts. They led and the Congress followed them. However, there were weak Presidents like Hoover and in their case while the Congress led, the President followed. This was particularly so from 1836 to 1861 and 1865 to 1898.

### **Increase of powers of President**

The powers of the President have increased tremendously and many factors have contributed towards it. The positive conception of the State has multiplied its functions and no wonder the American President as the real head of the State has to perform many more functions than he had to do previously. The growth of the party system has linked up the executive and the legislature and thereby strengthened the hands of the President. He can depend upon the support from the Congress, particularly from the members of his own party. This enables him to get things done in his own way through the legislature. The growth of the convention which has made the election of the President direct, has also added to the prestige of the President. The President has a direct appeal to the people of his country. The press, the radio and the cinema have added to the authority and popularity of the President. To quote Charles Beard, "Mechanical inventions may make a greater revolution in the powers of the President than a constitutional amendment." There has also taken place a revolution in the role which the President is expected to play in American politics. Before the Presidency of Jackson, the American Presidents took a very limited view of their functions. After Jackson, it was realised that the President must play the same role as the Congress did. He was to play the role of a leader with a mission and not merely to act as a helpless creature.

According to Schwartz, "The exercise of his authority under the Reorganization Acts of 1949 and 1953 has enabled the President to extend and consolidate his position as chief of the American administration. At the same time, from the point of view of effective management, it cannot be denied that the problem of effective organization of the federal executive still remains. Especially significant in this respect is the question of the independence of the regulatory commissions which, apart from the Maritime Commission, has hardly been touched thus far by presiden-



tial reorganization plans. The unaccountability to him of these agencies still greatly impairs the position of the President as general manager of the administration. Placed by the Constitution at the head of a unified and centralized Executive Branch, and charged with the duty to see that the laws are faithfully executed, he must detour around powerful administrative agencies which are in no way subject to his authority and which are, therefore, both actual and potential obstructions to his effective over-all management of national administrations."

### Comparisons

As regards the comparison between the American President and King of England, while the latter is a titular head, the former is not. The English King is the constitutional head of the State and as such he has practically no hand in the administration of the country. Everything is in the hands of the Prime Minister and his Cabinet who form the real executive of the country. Under the circumstances, it is more appropriate to compare the American President with the Prime Minister than with the King of England. In one way, his position is stronger and in another way weaker than the position of the British Prime Minister. He is stronger because he himself is the master of the whole show. In the case of England, the Prime Minister has to carry his Cabinet with him and he does not over-rule the members of the Cabinet on every point. He has sometimes to accept their point of view and act accordingly. Under the circumstances, the members of the Cabinet are certainly a check on the position of the Prime Minister. However, that is not the case with the American President. It is true that he also has a Cabinet but the members of his Cabinet are merely his nominees. They are not elected by the people and as such have absolutely no backing from the public. The President can dismiss the members of the Cabinet at any time he likes. The result is that he is in a very strong position. In one way, the American President is weaker than the Prime Minister of England. On account of the separation of powers, the American President is not always sure of getting all the powers he wants from the Congress. This division of responsibility between the Congress and the President must have created difficulties in the past and is likely to repeat itself in the future. The President is not always sure that the Congress will oblige him. However, the position is different if the same party has a majority in the Congress and has also its nominee as the President.

According to Laski, the position of the modern Prime Minister of England approximates to that of the American President. However, this view is not accepted. It is pointed out that even Prime Minister Churchill did not enjoy the authority and powers which President Roosevelt did. Mr. Harry Hopkins, in a report to President Roosevelt, wrote thus: "Your 'former naval person' is not only the Prime Minister, he is the directing force behind the strategy and the conduct of war in all its essentials. He has an amazing hold on the British people of all classes and groups.



He has particular strength both with the military establishments and the working people." Churchill himself admitted: "Never did a British Prime Minister receive from cabinet colleagues the loyal and true aid which I enjoyed during the next five years from the men of all parties in the State. Parliament, while maintaining free and active criticism, gave continuous, overwhelming support to all measures proposed by the Government and the nation was united and ardent as never before." Although Churchill was strong on account of a united Parliament, a united cabinet and a united people behind him, he could not act without his cabinet as President Roosevelt could do. Referring to the Atlantic Charter, Dr. Jennings rightly points out that "*the President pledged the United States, while the War Cabinet, not the Prime Minister pledged the United Kingdom.*"

According to Hyman, "Though his place outside the Congress takes from his hand the direct power of command a Prime Minister enjoys in the Parliament, by addressing the people directly he can ask them to *whip the Congress into line with what he wants done*. Though he is denied the benefits of a Cabinet which holds itself collectively responsible for any leading act of the administration, the President, unlike a Prime Minister, can repudiate any member or even the whole of his Cabinet and yet survive as an Executive. Though he does not directly participate in the Congressional debate, the President is nevertheless represented there through his legislative friends, through his enemies (who, because of self-interest or conviction will support some of his acts), through Cabinet officers and principal aides who appear before Congressional committees, and through the heads of private organizations and citizens of national standing who share the President's views. The impact, as the President speaks through these people, may be less than if he stood before the Congress in person to share in a debate. Nevertheless, these speakers do serve as shock absorbers for the Congressional and the national recoil, which might otherwise bowl over the President.

"American political literature contains exhaustive and exhausting debates about the respective merits of the American presidency and the English prime ministership. In a sense, the whole discussion is pointless. The two can be compared in their isolated details and judged for the strength and weakness they show in specific situations. But the basic act is that they do not function in isolated detail. They function within integrated and wholly different constitutional formulas for responsible power. And any attempt to graft a special trait of the prime ministership on to the presidency, without regard to the whole system it serves, could produce as great a distortion of line as if the grafting process was reversed from the presidency on to the prime ministership."

According to President Taft, "As every President has to do. I made many addresses, and the gentleman who introduced me, by way of exalting the occasion rather than the guest, not infrequently said that he was about to introduce one who exercised greater



governmental power than any monarch in Europe. I need hardly point out the inadequacies of this remark, by comparing the power of the President of the United States with those of the rules of countries in which there is not real popular legislative control. The powers of the German Emperor, of the Emperor of Austria, and the Emperor of Russia are far wider than those of the President of the United States. On the other hand, in really parliamentary governments, the head of the State is less powerful than our President. In England, as it is, the King reigns, but does not govern, and the same thing is true in the Dominion of Canada, of the Governor-General. In France, the President presides, but does not govern. In such parliamentary governments, however, there is a real ruler who exercises in some important respects a greater power than the President of the United States. *He is the premier and exercises both executive and legislative functions."*

According to Schwartz, the picture painted by President Taft is not accurate in many respects. To quote him, "The President of the United States is both the head of State and the chief of the executive branch. The fact that his tenure does not depend upon Congressional approval enables him to maintain an independence of the legislature which no British Prime Minister could assert and long remain in office. The election of the President upon a party basis has tended more and more to make him the leader of his party, though, because of the relative laxity of American party discipline, his control in this respect may not be as effective as that exerted by the British Prime Minister: Then, too, the status of the President as a national leader is one to which no Prime Minister in a parliamentary system can pretend. The President alone, of all governmental officials, is elected upon a nation-wide basis, and this enables his actions to be placed upon a basis of popular support such as that which no other individual can assert. In an age of mass communications, the President's position in this respect can easily be made effective by appeals, over the head of the Congress, as it were, for the backing of the electorate, when any part of his programme meets legislative opposition. In Britain too, of course, such appeals to the country can be made. But here, to be truly effective, they involve an election and the consequent risk of loss of office to the Prime Minister who makes them.

"In addition, the position of the American President as head of the administration appears, in some ways, more effective than that of the Prime Minister in Britain. To the President alone is delegated all of the executive authority vested in the Federal Government. The Prime Minister in Britain is, in relation to the members of the Cabinet, more or less like a chairman of the board of directors of the governmental enterprise. He is *primus inter pares*; he is as dependent upon his colleagues in the Cabinet as they are upon him. The relationship of the American President to his Cabinet is an entirely different one. He dominates them completely, for they hold their offices entirely at his pleasure. It is he alone who is responsible for ensuring that the laws are faith-



fully executed. It is he alone who is vested with the power to appoint and remove executive officers, and his authority in this respect enables him to control the government departments in a more efficacious manner than can the British Prime Minister.

"Then, too, the President is vested with authority which in the British system, is still retained by the Crown. It is the President who is the commander-in-chief of the armed forces, and his power in this respect is a real one, as recent American history clearly reveals. Under the Constitution, it is he who exercises the prerogative of pardon. The many formal duties, which, in Britain, devolve upon the Crown are, in America, performed by the President. In addition, bills passed by the Congress must be submitted to the President for his signature. The President, unlike the British Sovereign, it should be noted, does possess an effective veto power over legislation. The Crown's power to issue Orders-in-Council, which is, of course, only a formal power today, finds its counterpart in the United States in the Presidential authority to promulgate Executive Orders, an authority which the American chief executive exercises in substance as well as form.

"The analogy of the American President as an official whose position lies between that of the Crown and that of the Prime Minister in Britain, which President Taft, as we have seen, drew, is thus not entirely consistent with the facts. A more accurate conception would look upon the President as combining in his hands many of the powers exercised by both the Sovereign and the head of the Government in the British system. It is this combination of the functions of Queen and Prime Minister in his person that makes the office of the President such a significant and powerful one."

### **President's Cabinet**

It has already been pointed out that the President's Cabinet is not known to the law of the country. It has grown by convention during the last 170 years. It is pointed out that the Founding Fathers of the American Constitution did not regard a Cabinet as an essential institution. However, they made a provision in the Constitution for the heads of the various Departments. The consent of the Senate is required for their appointment, but that consent is very rarely refused. According to Finer, "These men are so obviously the personal assistants of the President that it would be not merely a deplorably ungraceful action of the Senate to refuse a man of his own choice in such matter, but it would lead, if the matter concerned sufficient members, to a breakdown of Government."

As regards the method of the selection of the members of his Cabinet, the President has ordinarily to choose them from the ranks of his own political party. However, in 1941, President Roosevelt included in his Cabinet two members who belonged to the Republican Party—Stimson and Knox.

The President can seek advice from others at the time of the



choice of his Cabinet. Tumulty, the Secretary to Wilson, has remarked thus on this point: "I informed the President that I would suggest the name of some one within a few hours. I then went to the library in my home in New Jersey and in looking over the Lawyer's Diary I ran across the name of Lindley Garrison, who was a resident of my home town and although I had only met him casually and had tried a few cases before him, he had made a deep impression upon me as a high type of equity judge. I telephoned the President-elect that night and suggested the name of Lindley Garrison, whose reputation as a distinguished judge of the Chancery Court was known to the President-elect. He was invited to Trenton the next day and without having the slightest knowledge of the purpose of this summons, he arrived and was offered the post of Secretary of War in Mr. Wilson's Cabinet which he accepted."

The members of the Cabinet are required not to betray the secrets of the Cabinet. It is stated that President Wilson wrote thus to Houston, his Secretary of Agriculture: "I am embarrassed by the fact that one or two members seem to be unable to refrain from telling everybody what happens in cabinet meetings. I wish to advice with the cabinet freely. Some things cannot be given publicity; at any rate, at once. It is important to consider what shall be said, and how and when I ought to have the privilege of determining this. The discussions should be free and full. If they cannot be kept within the family, leaving it to my discretion when and what to give out, it will make it difficult for me to canvass confidential matters as I should like."

All the members of the Cabinet have to carry out the orders of the President and if they cannot do so they must quit. No member of the Cabinet can be allowed to be a rival of the President. It is stated that differences arose between President Wilson and Lansing, his Secretary of State, and ultimately Lansing had to resign. When in 1920, President Wilson was not well, Secretary Lansing, as senior member of the Cabinet, called certain meetings of the Cabinet. President Wilson highly disapproved of this act of his Secretary. The President is stated to have written to Lansing: "Is it true, as I have been told, that during my illness you have frequently called the heads of the executive departments of the Government into conference? Under our constitutional law and practice, as developed hitherto, no one but the President has the right and no one but the President and the Congress has the right to ask their views or the views of any one of them on any public question." Again, "You kindly explain the motive of these meetings, and I find nothing in your letter which justifies your assumption of presidential authority in such a matter. I have to remind you, Mr. Secretary, that no action could be taken without me by the Cabinet and that therefore there could have been no advantage in not waiting action with regard to matters concerning which actions could have been taken without me." Lansing maintained his position in these words: "I cannot permit to pass unchallenged the imputation that in calling into informal conference the heads of



the executive departments I sought to usurp your presidential powers. I cannot agree with your statement that I have tried to forestall your judgment in certain cases by formulating action and merely asking for your approval."

According to Schwartz, "The basic fact about the relation of the President to his Cabinet is his complete predominance. The members of the Cabinet are merely the instruments by which the policy of the President is carried out. They are not members of Congress; they are not accountable to it, but only to the President, their master. The decisions which the Cabinet may reach in the weekly meetings which are normally held are only in the nature of advice to the President. The ultimate decisions are still exclusively his to take. Even a united Cabinet cannot prevail against his will. "He is a court of appeal from them all, and his verdict is decisive against them." Again, "It is, of course, true that the relation between President and Cabinet varies from President to President. A Franklin D. Roosevelt will himself take the initiative in all major matters; a Harry S. Truman will place for more reliance upon the advice of his Cabinet. But in both cases, it is the President alone who has the decisive voice, if he chooses to exercise it. It was this which led Lord Bryce to assert that "In this state of things one cannot properly talk of the cabinet apart from the President. An American administration resembles not so much the cabinets of England and France as the group of ministers who surround the Czar or the Sultan or who executed the bidding of a Roman Emperor like Constantine or Justinian."

Many factors are taken into consideration while appointing the members of the Cabinet and those are geographical considerations, conciliation, compromise, personal intimacy, gratitude, political strategy, administrative competence, etc. The attitude of the various Presidents towards the Cabinet has not been unanimous. Some of them think that the members of the Cabinet are their colleagues while others consider them as their subordinates. There are some who think that only men of ideals and initiative should be appointed as members of the Cabinet while others feel that both the ideas and initiative should come from themselves. President Jackson considered the Cabinet to be a burdensome affair and consequently did not call any meeting of the Cabinet for practically two years. General Grant considered the members of his Cabinet as merely second lieutenants. President Cleveland showed great respect to the views of the members of his Cabinet and tried to keep them in good humour. Theodore Roosevelt acted first and explained afterwards to the Cabinet. It is stated about President Wilson and President F. D. Roosevelt that the members of their Cabinet got their first information about any action taken by the President from the newspapers. They were never taken into confidence. The President holds weekly meetings of the Cabinet and discusses with them most of the matters of the State. It is stated that if an important message is to be sent to the Congress by the President, he sometimes



reads out the same before his Cabinet in advance. An efficient Cabinet can be of great help to the President in his work.

The members of the President's Cabinet differ fundamentally from the Ministers of England. In the case of the Ministers of England, they are public men and as such have the backing of the people. They are in the position of the colleagues of the Prime Minister and the latter has to carry them along with him and cannot afford to ignore them completely. However, that is not the case in the U.S.A. The members of the cabinet are merely the nominees of the President. They are not elected at all. The President can appoint any one as a member of his Cabinet and also remove him without any difficulty. A President is not bound by the advice of his ministers. Even if he has one vote, it is only that vote which counts and not that of any other member of his Cabinet. It is stated that on one occasion, President Lincoln put a matter before his Cabinet and all the seven members of the Cabinet opposed that measure. The ruling of President Lincoln was that although seven were against and only one was in favour, it was the one who carried.

According to John Adams, "In all great and essential measures the President is bound by honour and his conscience, by his oath to the Constitution, as well as his responsibility to the public opinion of the nation, to act according to his own mature and unbiased judgment, though unfortunately, it may be in direct contradiction to the advice of all his ministers."

A suggestion has been made to allow the members of the Cabinet to sit in the Congress and take part in its debates. However, critics point out that if the object of the reform is not to revolutionize the constitutional system of the U.S.A., the reform is bound to result in a lot of trouble. The American President will be transformed into a French President. The Congress will not be changed into an English Parliament but into a continental congress. It will be in a position to overthrow the policies of the President without overthrowing itself at the same time. According to Laski, "If the Cabinet is to sit in the Congress, the President must choose its members from those who are likely to be influential with it. This at once narrows his choice. It makes him think of the men who already have some standing in its eyes, and some direct knowledge of its complicated procedure. But this means putting a premium on the experienced members of either House as cabinet material. It means, further, that the more successful they are upon the floor of Congress, the more independent they are likely to be vis-a-vis the President. They will develop a status of their own as they become known as the men who are able to make Congress take their views about the bills they promote. They are likely, in fact, to become rivals of the President himself for influence with Congress. The problem, in this situation, of maintaining cabinet unity would necessarily become a difficult matter. Congress might easily tend to weaken the administration by playing off the Cabinet, or some part of it, against the President and some other part. The loyalty of the cabinet officers would be divided." Again, "Would not the



position of a President like Lincoln, whose hold on his own colleagues was small when he assumed power, become virtually untenable if Congress were in a position to play them off against him? Is there not, indeed, the danger of a powerful cabal of cabinet officers becoming the effective mediator between the President and Congress with a vital shift, as a consequence, in the present delicate balance of power? Would it not, further, be likely that a tendency would rapidly develop for any cabinet officer who became outstandingly influential with Congress to become the rival of the President himself. and where the latter was weak, in actual fact his master?"

The Cabinet of the President has grown during the last 170 years. The offices of the Secretary of State and Secretary of Treasury were created in 1789, that of Postmaster-General in 1792, that of the Secretary of the Interior in 1849, that of the Attorney-General in 1870, that of Secretary of Agriculture in 1889, that of Secretary of Commerce in 1903, that of Secretary of Labour in 1913 and that of Secretary of Defence in 1947. Every Secretary gets a salary of 15,000 dollars a year.

(1) *The Secretary of State* is in charge of the Department of State and is a senior member of the Cabinet. He is given the first place among the Cabinet members at all social and ceremonial occasions and he sits at the right hand of the President at the meetings of the Cabinet. He is the Secretary of the Government and he handles all official communications, both domestic and foreign. He is the head of the foreign service. He keeps all the treaties made by the United States and all the laws enacted by the Congress. He is in charge of the Great Seal of the United States. Some Presidents allow a lot of personal initiative in conducting foreign affairs to their secretaries of state while others prefer to keep the same in their own hands.

(2) *The Secretary of the Treasury* has a number of assistants to help him. He has to supervise the collection and safe-keeping of all the taxes levied by the Federal Government. He has to pay out of the treasury only those amounts which have been authorised by the Congress. He supervises the printing or coining of United States money and bonds. Tax-dodgers and counterfeiters are investigated and arrested by the Secret Service attached to the Treasury Department. The Coast Guard Service and the Light-House Service are also under the control of this Department.

(3) *The Attorney-General* is the head of the Department of Justice. He is the legal adviser to the President, the Congress and the heads of the other Departments of the Government. His duty is to get crimes investigated and offenders prosecuted and punished for violation of the federal laws and treaties. The United States Marshals, the Bureau of Prisons and the Federal Bureau of Investigation work under the control of the Attorney-General.

(4) *The Post Office Department* is the greatest business enterprise of the Government. It employs three lakhs of persons and its

annual business amounts to about 750 million dollars. The Postmaster-General is the head of this Department and he is helped in his work by four assistant Postmasters-General. The latter are in charge of employees, supervision of transport and delivery of mails, finances and buildings, equipment and supplies. As the main object of the Post Office Department is to serve the people and not to make money, the postal rates are kept as low as possible.

(5) *The Department of the Interior* is in charge of the survey, management, sale or lease of public lands, conservation, the health, education and general supervision of Indians, the safety of miners through its Bureau of Mines, the testing of fuels for the Government, the production of helium gas for the navy's lighter-than-air craft, the education of the natives of Alaska, the administration of funds appropriated to colleges for instruction in agriculture, mechanical arts and home economics, the supervision of national parks and monuments, the Geological Survey, the supervision of the Governments of Virgin Islands and Puerto Rico, etc.

(6) The main work of the *Department of Agriculture* is scientific research and investigations for the help of the farmers in the country. For that purpose, it maintains bureaux of animal husbandry, chemistry and soils, entomology and plant quarantine, biological survey, agricultural economics, home economics, agricultural engineering, soil conservation service and weather. It enforces the federal laws with regard to food and drugs. It maintains the Forest Service and a Bureau of Public Roads.

(7) The main functions of the *Department of Commerce* are the taking of the census, encouragement of foreign commerce, supervision of air commerce, maintenance of testing laboratories to establish standards of various materials purchased by the Government, maintenance of standard units of weights and measures, supervision of light-houses and navigation, registration of patents and copyrights, etc.

(8) *The Department of Labour* has to "foster, promote and develop the welfare of the wage-earners of the United States." It has a separate branch to promote the welfare of women workers and create more opportunities for their employment. The Department collects facts and figures on labour conditions and maintains an employment service.

(9) *The Department of National Military Establishment* was set up after the Japanese attack on Pearl Harbour during the Second World War. The Departments of War, Navy and Air Force have been put under this Department which is headed by a secretary of the Cabinet rank.

(10) *The Department of Health, Education and Welfare* was set up as a result of the recommendations made by the Hoover Commission and the wishes of President Eisenhower.



**SUGGESTED READINGS***Agar, Herbert*

: The United States, the President, the Parties and the Constitution.

*Bronlow, L.*

: The President and the Presidency, 1949.

*Corwin, E. S.*

: The President, Office and Powers, 1940.

*Hayman, S.*

: The American President, 1954.

*Laski*

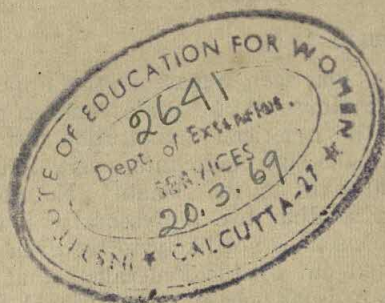
: The American Presidency, 1952.

*Munro*

: The American Presidency.

*Wilson, W.*

: The President of the United States, 1916.



## CHAPTER 12

### THE AMERICAN CONGRESS

According to Lord Bryce, "It (Congress) is not the hasty and turbulent body which the fathers of the Constitution feared they might be creating. Storms of passion rarely sweep over it. Scenes of disorder are not unknown. Party discipline is strict: an atmosphere of good fellowship prevails; the rules of procedure are obeyed; powers rest comparatively with few persons. It is eager, even unduly eager, to discover and obey the wishes of its constituents or at least of the party organisations." The U.S.A. has a bicameral system. The American Congress consists of two Houses: the Senate and the House of Representatives. Neither in composition nor in powers, the two Houses are equal. It is desirable to discuss them separately.

#### The Senate

The American Senate is the upper chamber of the Congress. It is the House of the States and as such represents the federal idea in the American Constitution. It is specifically provided that whatever the size of a State, every State has the right to send two representatives to the Senate.<sup>1</sup> No State can be deprived of its right of sending two representatives without its own consent and such a consent is not likely to be given by any State. It was rightly pointed out by the Federalists that "the <sup>entire</sup> equal vote allowed to each State is at once a constitutional recognition of the portion of the sovereignty remaining in the individual State and instrument for preserving that residuary sovereignty." The 50 States of the U.S.A. send 100 members to the Senate.<sup>2</sup>

Formerly, the Senators were elected by the legislatures of the States. But that system resulted in "long and stubborn contests" which led to deadlocks. Many a time, the legislatures failed to elect a Senator and the State was not represented in the Senate at all. It is estimated that between 1890 and 1912, not less than 11 States at one time or another were represented in the Senate by only one member. In 1901, the State of Delaware was not represented at all in the Senate. All kinds of corrupt practices were resorted to at the time of elections. According to Garner, "Between 1895 to 1910, a number of wealthy men found their way into the Senate through the votes of legislators who were liberally paid

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1. According to Garner, "In practice special elections are rarely called for filling vacancies. In most states, the governor makes a temporary appointment, the appointee holding until the next regular election when the people elect his successor."

2. Formerly, there were 48 States in the U.S.A. However, Alaska and Hawaii were added to the United States in January and August 1959 respectively.



for their support." The long and stubborn contest in the state legislatures for senatorial seats, interfered with their regular business. It was under these circumstances that a movement was started to change the existing system and ultimately the Constitution was amended to provide for a system of direct election by the people.

The 17th Amendment of 1913 provided for direct election of the Senators by the people of the States. Temporary vacancies are filled up by the State executives. Every Senator is elected for six years but one-third of the Senators retire after every two years. The result is that the whole of the Senate is never dissolved and it becomes a perpetual House. Every Senator gets a salary of 75,000 dollars a year. He has the freedom of speech and also the right to freedom from arrest. The Senators are "prohibited from practising before the executive department for monetary consideration, and they cannot be appointed to any civil office under the United States which shall have been created or of which the emoluments shall have been increased during the term for which they were elected."

Every Senator must possess certain qualifications. He must not be less than 30 years of age at the time of election. He must have been a citizen of the U.S.A. for at least nine years. Moreover, he must belong to the State from which he is elected. It is to be noted that residential qualifications are not necessary in England or in India. However, those are necessary for the Senators in Canada.

### Vice-President

Ordinarily, the Vice-President of the U.S.A. presides over the meetings of the Senate. As pointed out before, he is not elected by the Senate but by the people of the U.S.A. along with the American President. In the case of the death of the American President, he steps into his shoes. Mr. Truman who was the Vice-President in 1945 became President for the rest of the term on the death of President Roosevelt. Although the office of the Vice-President is important, yet it is the butt of endless jokes. It is looked upon as a political graveyard and is consequently avoided by all those persons who have high ambitions. It is pointed out that every party uses the Vice-Presidency to balance the ticket or to appease or reward some elements.

The responsibilities of Vice-President are not very many. It is the duty of the Vice-President to respect the customs and traditions of the Senate and that does not allow him much discretion. Unlike the Speaker of the House of Representatives, the Vice-President acts in an impartial manner and uses his vote only in the case of a tie. It is not possible to change things in the Senate. It

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3. [New York State has a population of 15 millions and Nevada only 16,033 but each state has two senators.]

is stated that Mr. Dawes tried to modernise the Senate when he was the Vice-President but his efforts failed.

Ordinarily, weak persons are chosen as Vice-Presidents. However, President Roosevelt got Henry Wallace elected as Vice-President and also gave him a large number of responsibilities. Likewise Mr. Truman as Vice-President helped President Roosevelt in the matter of congressional problems. When Mr. Barkley was the Vice-President, he set up a valuable liaison between the Congress and the Party. An Act of 1949 provides that the Vice-President will be given a salary of 30,000 dollars a year. He is also entitled to 10,000 dollars per year for his expenses.

In addition to the Vice-President, there is another officer of the Senate known as *President Pro Tempore*. Unlike the Vice-President, he is elected by the Senators from among themselves. He presides over the meetings of the Senate in the absence of the Vice-President and also gets a salary.

Most of the work of the Senate is done through a large number of committees. The important committees are on Finance, Foreign Affairs, Appropriations, Inter-State Commerce and the Judiciary. Every Senator is entitled to speak as long as he pleases. There is no time-limit on the debates. The result is that the right has been used by "leather lunged Senators to talk measures to death at the close of its session." It is stated that Senator Smooth of Utah spoke the whole of the night at one occasion. Senator Shepherd of Texas spoke continuously for six hours and fifteen minutes and it is stated that "in that time he did not sit down, rest himself, nor even take a drink of water." In 1908, Senator Follette of Wisconsin and his colleagues spoke so much that the session lasted continuously for thirty hours.

A curious system of the U.S.A. enables the Senators to get their speeches printed in the Congressional record if not a word of them has been delivered in the Senate. Although these speeches are never delivered, even then such words as "applause" and "loud" and "prolonged applause" occur in the record of the Senate. A Senator is also allowed to speak out a few words and then propose that the rest of his written speech may be considered to have been read. There is no such system in India or in England. However, if an article has been printed in the press, it cannot be allowed to be made a part of the Congressional record.

### **Powers of the Senate**

The American Senate has been given a large number of powers. It was intended by the Founding Fathers to act as the American counterpart of the English Privy Council. It has legislative, executive and judicial powers.

(1) The Senate has a lot of control over legislation. Ordinary bills can be introduced in the Senate and even if a bill has originated in the House of Representatives, it must receive the sanc-



tion of the Senate in order to become a valid piece of legislation. If a bill is opposed by the Senate, it has no chance of becoming law.

As regards the money bills, they must originate in the House of Representatives, but this does not mean that the Senate has no control over them. The latter has the power to reject or amend in any way a money bill. The amendments to a money bill may be so many that the whole of the money bill may be changed completely. Only the original title may remain but the whole of the contents may be changed altogether. Unless and until the House of Representatives agrees with the amendments proposed by the Senate, the bill cannot be passed. The result is that the Senate has originated many money bills in fact, if not in form. It is also pointed out that 'the Senate has originated more important legislation than the House'.

(2) The Senate was given a large number of executive powers also. Their object was to make the Senate a check on the monarchical ambitions of the President.

As already pointed out, certain appointments are made by the President which have to be approved of by the Senate. It is possible that the appointments of the President may proceed "from family action, from personal attachment or from a view of popularity". (*Hamilton*). Though the appointments have to be ratified by the Senate those may not be confirmed. There is also the convention of Senatorial courtesy which requires that while making appointments in a particular State, the President must consult the Senators of his own party from the State.

The Senate has been given the power to ratify treaties negotiated and signed by the President. The majority for that confirmation is two-thirds of the Senate. It is not necessary that the Senate will always approve of the treaties made by the President. It may reject the treaties or recommend to the President their revision in certain respects. It is well-known that the Senate refused to ratify the Treaty of Versailles of 1919, and consequently the U.S.A. did not join the League of Nations at all. According to John Hay, a former Secretary of State, "A treaty entering the Senate is like a bull going into the arena; no one can say just how or when the final blow will fall—but one thing is certain—it will never leave the arena alive". However, it cannot be denied that the Senate has unconditionally approved about 900 of the approximately 1,100 or more treaties submitted to it. Many of the remainder were passed with amendments or reservations.

The Senate has also the power to request the President to negotiate with a foreign power on any matter. Although the President usually does so, he is not bound to do the same. The initiative lies with the President and not with the Senate. On the other hand, the President may recall the treaty from the Senate even after submission and may refuse to complete the work of ratification even after the approval of the Senate.

(3) A reference may be made to the special investigations

undertaken by the Senate into all kinds of matters. Theoretically, the various investigations are undertaken with a view to collect facts and figures for the purpose of enabling the Senate to frame future legislation. Committees of investigation are appointed to know the facts about a problem at first hand. These committees have the power to summon witnesses to compel the production of papers and take evidence on oath.

The investigations conducted by the Senate are terrible. Most of the officials "dread the loaded questions of hostile Congressmen." Senatorial investigations operate "directly in the spotlight". Very often, the proceedings are covered by news-reel and television cameras and reported by a host of newsmen. Recently, the investigators have indulged in defamation of character, bullying and mistreatment of witnesses and outright partnership. The danger of the present system has been put in these words by Senator Scott W. Lucas: "Unless Congress reforms its method of conducting investigations, unless it puts some limits of responsibility both upon the interrogation of witnesses and upon the type of testimony which witnesses are allowed to give—unless, indeed, it adopts a wholly new and more judicious attitude—one of the great and important instruments of legislative process will be destroyed."

A question may be asked as to why the American Senate particularly has been given executive powers while this is not the practice in the case of other countries. Lord Bryce has given the following justification for it. "Neither the exercise of patronage nor the conduct of foreign affairs could safely have been left to a President irremovable (except by impeachment) for four years, and whose ministers do not sit in the legislature and are not answerable to it, nor could those matters have been assigned to a body so large and so short-lived as the House, which would have been less responsible to the nation, and which is, under its stringent rules, to debate either Bills or current administrative issues with a thoroughness sufficient to enlighten the country."

The Senate has "the sole power to try all impeachment." The system of impeachment was provided as a safeguard against the exercise of arbitrary power. According to Hamilton, "A well-constituted court for the trial of impeachment is an object no more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself. The prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In such cases there will always be the greatest danger that the decision will be regulated more by the comparative



strength of parties, than by the real demonstrations of innocence or guilt."

The President, the Vice-President and all civil officers of the U.S.A. can be impeached. The charge is brought by a resolution of the House of Representatives and the Senate has no option in the matter. It has to hear the charge. When a public official has been convicted by the Senate, all that can be done against him is to remove him from his office. He cannot be put to death, imprisoned or fined. A two-thirds vote of the Senate is necessary for conviction on impeachment. When a person is successfully impeached, no pardon from any source is possible.

As regards the procedure, the requisition is made by a member of the House of Representatives and a Committee is appointed to investigate the case. If the Committee recommends impeachment, the person is impeached before the Senate. When the Senate meets for impeachment, it is not the Vice-President of the United States who presides over the meeting of the Senate. On that occasion, the Senate is presided over by the Chief Justice of the United States.

In all, there have been only 12 federal impeachments and five of them were during the last 40 years. The famous impeachments were those of President Johnson, William Blunt, etc., but none of them was convicted.

According to Dr. Munro, "An impeachment is, at best, a cumbersome and costly proceeding. It is not a method to be used if there is any simpler way of securing an officer's dismissal. But in the case of President, or of federal judges who hold their offices during good behaviour, or of Cabinet members whom the President may decline to dismiss, it may be the only way of forcing any one out of office immediately. Threats of impeachment are made from time to time when members of the Cabinet or other high officials become unpopular with Congress, but most of these are merely political vapourings. Impeachment is a procedure that should never be utilised except as a last resort."

Reference may be made to the solidarity of the Senate. It is rightly pointed out that "in a sense, the Senate is a mutual protection society." Every Senator helps the other in protecting his rights and privileges. While doing so, party considerations are absolutely ignored. When in 1938, President Roosevelt tried to ignore Senatorial courtesy, he was opposed by all the Senators. The Senators act upon the principles of live and let live and do not allow anybody to invade their privileges. "Washington correspondents have frequently reported that two Senators may attack each other in vehement language on the floor only to be seen a short time later strolling arm in arm in the corridors outside."

### Estimate

Lord Bryce has given his estimate of the American Senate in these words: "It has succeeded by effecting the chief object of

the fathers of the constitution, viz., the creation of a centre of gravity in the government, an authority able to correct and check on the one hand the democratic recklessness of the House, on the other the monarchical ambition of the President. Placed between the two, the Senate is necessarily the rival and often the opponent of both. The House can accomplish nothing without its concurrence. The President can be checkmated by its resistance. These are, so to speak, the negative successes; on its positive side, it has succeeded in making itself eminent and respected." Again, "It is no more conservative in spirit than the House, contains fewer rich men than it did twenty years ago, and is no longer in marked sympathy with wealth. While with its smaller size, it gives men of talent more chance of showing their mettle, and becoming known to the nation at large, it also does something to steady the working of the machinery of the government, because a majority of its members, safe in their seats for four or six years, are less easily moved by the shifting gusts of public feeling. Whatever its faults, it is indispensable." George Washington once described *the Senate as the saucer in which the boiling tea of the House was cooled.*

To quote another eminent writer, "There are things which the President and the Senate may do without the assent of the House of Representatives and things which the House and the Senate may do without the assent of the President, yet the President and the House can do comparatively little without the assent of the Senate." According to Prof. Lindsay Rogers, the American Senate has become "the most remarkable invention of modern politics."

A question has been asked whether a person would like to sit in the House of Representatives or in the Senate if he were allowed a free choice in the matter. Evidently, the reply is that he would like to sit in the Senate and not in the House of Representatives because the Senate is much stronger than the House of Representatives. The life of the House of Representatives is 2 years and after two years a representative has to fight a new election. That involves a lot of expenditure and trouble. A person would like to sit in the Senate as he can sit there for 6 years. Obviously, a Senator has to spend less money and put up with less inconvenience. That decides the choice in favour of the Senate. Another reason is that the Senate has more powers than the House of Representatives. The Senate has practically an equal control over legislation and it is rightly pointed out that more important legislation has been introduced in the Senate than in the House of Representatives. Moreover, in addition to legislative powers, the Senate has executive functions. It has a lot of control over appointments and treaties made by the President. It is pointed out that there is more freedom of debate in the Senate than in the House of Representatives which is always over-worked and short of time. The smaller size of the Senate as compared with the House of Representatives, creates a better atmosphere for deli-



beration. For all these reasons, a seat in the Senate is to be preferred to a seat in the House of Representatives.

Regarding the ascendancy of the Senate, Ogg and Ray observe thus: "Nor is senatorial ascendancy a mere matter of luck or chance: substantial reasons for it can be found in various advantages which the Upper House enjoys as compared with the Lower. Its members are on the average, somewhat older, have wider knowledge of public affairs and, in particular, have more legislative experience because of no longer terms, more numerous re-elections, and continuous recruiting of vigorous members from the Lower House. Its members, too, commonly are more important as party leaders within their States (and in some cases nationally) than are representatives. Their smaller number gives men of talent a better chance to show their mettle and become known to the country at large. With rare exceptions, senators enjoy far more patronage than do representatives: and the Senate's special powers of confirming appointments and assenting to the ratification of treaties place in its hands weapons which can be employed formidably in relation to other matters as well. Finally, while it unhappily remains true, as Lord Bryce asserted many years ago, that neither branch of Congress attracts the best talent of the nation, the Upper House tends to absorb, sooner or later the best that enters political life, including abler members of the Lower House who top off their careers in the Senate. Certainly the Senate today contains fewer men of wealth, and decidedly fewer political bosses of the Hanna-Quay-Platt type, than 40 or 50 years ago. By the same token—and notwithstanding reactionaries on both sides of the centre aisle—it is less conservative than formerly; indeed, an examination of the records would probably give it a claim to be regarded as on the whole more liberal and progressive than the other branch. On the average, debate (except during filibustering outbursts) is on a higher plane; greater interest has been manifested in curbing the abuses of lobbying; support for the legislative modernization of 1946 was more wholehearted... support, indeed, for more reorganization than the House was willing to accept. Under existing rules of procedure, it is true, demagogues occasionally run riot and bring the body into disrepute and even contempt. The general membership, too, sometimes is swayed by partisan passion and prone to 'play politics', as is that of the House. By and large, however, the Senate contains a larger proportion of members whose speeches and votes show independence of spirit and judgment; and, while handicapped by the propensity of mediocre members to stand stiffly on their rights under the rules and try the patience of the country with their obstinacy or buffoonery, it is composed, in at least as large degree as the House, of men who are able, industrious, fair-minded, sparing in speech, and anxious to get on with the public business."

About the Senate, De Tocqueville observed thus and the same substantially holds good today: "On entering the House of Representatives of Washington one is struck by the vulgar demeanour of that great assembly. The eye frequently does not discover



a man of celebrity within its walls. Its members are almost all obscure individuals... At a few yards distance from this spot is the door of the Senate, which contains within a small space a large proportion of the celebrated men of America. Scarcely an individual is to be perceived in it who does not recall the idea of an active and illustrious career: the Senate is composed of eloquent advocates, distinguished generals, wise magistrates, and statesmen of note, whose language would at all times do honour to the most remarkable parliamentary debates of Europe."

### House of Representatives

If the Senate is the House of the States, the House of Representatives is the House of the People. According to Patterson, "The House of Representatives is the nation in miniature. It is a mosaic of American life, representing its extremes, mediocrities, and diversities, whether of a social, temperamental, political, or religious character. The provincial character of its membership drawn as it is from districts organised on the basis of population necessarily makes it reflect the heterogeneity of American life.

"It is thoroughly American in its temperament. It will slavishly submit to the control of its Speaker for a series of years, and to the dictation of the Senate and President, and then suddenly become revolutionary in character. It will defeat measures as a committee of the whole, transform itself into the House by rising from its seats and approve what it has just defeated as a committee. It will oppose Civil Service as a Committee and then originate a revenue bill to extend the services of the Civil Service Commission."

Originally, the House of Representatives consisted of 65 members only. With the passage of time and the growth of population, the strength of the House of Representatives began to increase. However, the same has been finally fixed at 435. The number of representatives sent by any State depends upon its population.

The members of the House of Representatives are elected for two years and their tenure can neither be increased nor decreased. Every representative must be a citizen of the United States for at least seven years. His age must not be less than 20. He must belong to the State from which he is elected. A custom has developed that the representative should belong not only to the State but also to the particular electoral district from which he is elected. It cannot be denied that the locality rule is not a very happy one because nature may not distribute talent equally in all the electoral districts. The result is that if there are many brilliant persons belonging to the same party in a particular electoral district, all of them cannot be returned to the Congress and consequently the country must suffer. Likewise, there may be an electoral district where there may be no brilliant person at all and that electoral district may be represented by a person of mediocre



ability. The locality rule also adds to the spirit of localism and parochialism.

As regards the qualifications of the electors, the Constitution provides that they shall have the qualifications required for electors of the most numerous branch of the State Legislature. This means that persons qualified to vote for the Lower House of the State Legislature are also entitled to vote for the House of Representatives. The voting qualifications vary in many States. Generally, all citizens of the age of 21 have the right to vote.

Every representative gets a salary of 12,500 dollars a year. In addition, he gets 25,000 dollars tax-free for hiring of a clerk, stationery, etc. He also gets travelling allowance at the rate of 20 cents per mile. Every representative is allowed to send his letters free. It is stated that "the House of Representatives is perhaps the most expensive law-making institution in the world."

### Speaker

Unlike the Senate, the House of Representatives elects its own Speaker. He is the most important officer of the House of Representatives and also its central figure. While in the case of England, the Speaker gives up his party connection after his election and behaves in a very impartial manner in the House of Commons, that is not the case in the U.S.A. The American Speaker is elected on party lines and continues to remain a party-man even after his election. In England, the Speaker is returned unopposed from his constituency as many times as he intends to be returned. He is also re-elected Speaker as many times as he wants to retain that office. However, in the case of the U.S.A., as the Speaker remains a partisan even after his election, there is no possibility of his being returned unopposed from his constituency. If the same person is returned from a constituency and his party also manages to secure a majority in the House of Representatives in the fresh elections, there is likelihood of his being re-elected as Speaker.

There was a time when the American Speaker had a very large number of powers and his prestige was second only to that of the American President. Prof. Beard has described the position of the Speaker in these words: "At the opening of the twentieth century, the directing power in the House was unquestionably concentrated in the Speaker, the majority members of the Rules Committee (of whom the Speaker was one), and the chairmen of the important committees. The positive leadership of these men and their responsibility was definitely recognised throughout the country. They were working towards something like an inner council of government, they formulated policies and brought the other party members into line under a regime of severe discipline. In fact, the speaker was the outstanding figure in this little group of dominant leaders." Another writer observes thus: "The Speaker's control over legislation is now, under the rules and practices of the House, almost absolute. The people know this now. The time has passed when the Speaker could exercise his vast



powers unsuspected. Nor can he shirk his responsibility. No bill can pass the House without his passive approval, and that in effect is the same thing as active advocacy.' The Speaker also appointed the members of the various committees and their chairmen. He also controlled the Committee of Rules which regulated the work of the House of Representatives and also prepared the time-table of the House.

According to Prof. Munro, "Beginning with Henry, the Speaker gradually became the recognised leader of the majority party and hence of the House as a whole. He became the man on whom the majority depended for getting its measures safely through the maze of rules. More and more authority was absorbed into his hands until he became a virtual dictator." Speaker Thomas B. Reed was known as Czar Reed. Joseph G. Cannon was known as Uncle Joe. In the words of Prof. Ogg, "A simple chairmanship grew into a vital dictatorship carrying the power over life and death over almost everything that the House undertook to do."

There was a lot of criticism of the powers of the Speaker and consequently in 1910, the Speaker was removed from the Rules Committee. In 1911, his power to appoint all the members and chairmen of all the Committees was also taken away. But in spite of this, the American Speaker possesses a lot of prestige and performs many duties. Unlike the English Speaker, the American Speaker participates in the debates of the House as a partisan. It is stated that on one occasion Speaker Henry Clay had his name called first so that his vote could influence his followers. It is pointed out that the U.S.A. has a presidential form of Government and as such neither the President nor the members of his Cabinet sit in the House of Representatives. In the absence of the leadership of the executive, that place is taken up by the Speaker and no wonder he is in a way the leader of his party in the House of Representatives. He has to see that the legislation which his party wants to be enacted, is passed within time. He has to help his party in every possible way he can.

It is the duty of the Speaker to decide the points of order and interpret the points of procedure. A majority of the House of Representatives can overrule the interpretation put on a rule by the Speaker although the same is done very rarely. It is clear that the ruling of the Speaker is not a final one and in this respect he differs from the Indian Speaker and the English Speaker. The Speaker puts questions to a vote. He signs all the acts, addresses, joint resolutions, writs, warrants and subpoenas ordered by the House. He appoints the select committees and conference committees. If there is any dispute as to which committee a particular bill be referred, it is for the Speaker to decide the matter. It is his duty to recognise persons and regulate the debates. He presides over meetings of the House and maintains order and discipline. He can order the lobbies to be cleared if



he considers the same to be necessary. He has to announce the order of business and also declare the results of voting.

According to Ogg and Ray, "The Speaker is still the most commanding figure in the House and as such has many important things to do. He takes the chair at the hour appointed for a sitting of the House, sees that the journal of the preceding sitting is read, preserves order and decorum, and, in case of disturbance or disorderly conduct, causes the galleries or lobbies to be cleared. He 'recognizes' members desiring the floor. He signs all acts, addresses, joint resolutions, writs, warrants, and subpoena as ordered by the House; interprets and applies the rules; decides questions of order, with no really effective appeal to the House; puts questions to a vote; and appoints such select and conference committees as from time to time are authorised. As a member of the House in full standing, he has the same right to speak and to vote that other members have although he is not required to vote except when his vote would decide the issue, as by breaking a tie. He may appoint any other members to serve as presiding officer in his place for a period not to exceed three days (in case of illness, ten days); and in practice he often calls upon other members to occupy the chair temporarily."

According to Dr. Finer, "He (Speaker) still remains in intention and practice a party man. He is still one of the very small knots of Congressional leaders who treat with the President for passage of administrative measures. He is still consulted by, and has great sway with his party, 'steering' committee and the Floor leader of the majority party. He is still a major factor in deciding assignments to committees and the priority of business, because he is one of the most eminent, usually the most eminent, of the party: that indeed is why he was elected Speaker. Order and system in a House of 435 members there is bound to be, and the power of leadership must somewhere be lodged. While, until 1910, it was concentrated in the Speaker and his friends by grace, it is now concentrated in the Speaker's friends and the Speaker. Leadership has been 'syndicated' or put into 'common' but the Speaker is still the predominant member of the syndicate."

It is pointed out that most of the American Speakers have been men of well-tested ability, industry and tact. They had qualities of leadership. Some of the important speakers were Henry Clay, Winthrop, Colfax, Blaine, Randall, Cannon, Rayburn, Reed, Longworth, etc.

### **Powers and Functions of Congress**

The Congress exercises a lot of powers which are both legislative and non-legislative. As regards its legislative functions, no bill can become the law of the land unless and until the same has been passed by the Congress. The subjects on which the laws can be passed by the Congress are enumerated in the Constitution. Their scope has been widened as a result of the application of the doctrine of implied powers. The Congress has also been autho-



risied to pass "appropriate legislation" to enforce the powers already granted to it. The "general welfare clause" in the Constitution has also added to the powers of the Congress. The words of the Constitution are that "Congress shall have the power to provide for the common defence and the general welfare of the United States." It is true that the President has the power to veto a bill passed by the Congress but that veto power is not absolute. The Congress can override the veto by passing the same bill by a two-thirds majority.

The Congress plays an important part in the amendment of the Constitution also. The Constitution cannot be amended unless the amendment is passed by a two-thirds majority of the Congress. Not a syllable of the Constitution can be changed without the approval of the Congress. The interpretation put on the Constitution by the Congress is usually not interfered with by the Supreme Court of America.

After every four years, both the Houses of the Congress meet in a joint session to count the electoral votes cast for the President and the Vice-President. If no candidate gets a majority of the electoral votes for the President, the House of Representatives selects the President from among the three candidates who have the largest number of votes. When no candidate gets a majority of the electoral votes for the Vice-President, the choice is made by the Senate from two candidates who have the highest number of votes. However, only one Vice-President was selected in this way in 1837. The Congress has also the power to legislate on the times, places and manner of holding elections for Senators and Representatives. It prescribes the qualifications of its members. It also decides whether a particular election is a valid one or not. It can disqualify persons whose conduct is not approved of by a majority of the members of the Congress. In 1926, the Senate refused to allow William S. Vare to sit in the Senate as he was found to have spent too much money on the election campaign.

The treaties negotiated by the President have to be ratified by the Senate and clever Presidents take into confidence the Senate before actually signing them. The Congress has also a hand in the appointments made by the President. The convention of senatorial courtesy demands that the President should appoint only those persons in a state who are favoured by the Senators belonging to his party from that state. As a matter of fact, even their names are suggested by those Senators to the President. If no Senator from a state belongs to the party of the President, the appointments are made in consultation with the members of the House of Representatives belonging to the President's party from that state.

The Congress also performs judicial functions. The House of Representatives can impeach the President, Vice-President and other federal officials and the trial takes place in the Senate. Both the Houses take action against their members. They have the right of even turning out their members although that is not



usually done. Even private individuals can be punished if their conduct interferes with the work of the Congress. They can also be punished for contempt. They can be arrested and kept in custody.

The Congress also exercises the function of directing and supervising the various departments of the government. It can pass resolutions containing directions for certain departments and the latter have to follow them. The Congress can require the various departments to submit reports regarding their working. It can create administrative agencies. The Comptroller-General is responsible to the Congress and not to the President.

The Congress also appoints committees of investigation and thereby criticises the various acts of omission and commission of the various departments. The officials of the government are terribly afraid of these investigations.

### **The Congress and President**

The U.S.A. has a presidential form of government and as such both the Congress and the President are independent of each other. The members of the House of Representatives are elected for two years and those of the Senate are elected for six years. The President has no power to dissolve either the House of Representatives or the Senate earlier than their stipulated periods. Likewise the President is elected for four years and he continues to remain in office for the full term. The President and the members of his Cabinet are not responsible to the Congress. No amount of criticism by the Congress can turn out the President. Even if the President ignores altogether the Congress, the latter is absolutely helpless. Even if the Congress passes a vote of no-confidence against the President, the same has no legal effect on him. It is clear that both the Congress and the President are independent of each other.

"There is a great and serious gap in our constitutional system between the President as a policy-maker, and the Congress as a policy-maker. Both hold constitutional mandates which merit them that role. But it makes no more sense to subordinate the President's mandate to that of the Congress than it does to turn the order of subordination around. As things now stand, it is difficult enough for the President to find a congenial group of party leaders in the House and Senate who can act as his representatives on the floor of the Congress. These men have their own home districts to worry about while they are acting the part of majority leaders. They will not light-heartedly run home-town risks in the name of the national interests. Moreover, they are elected to the post of majority leader by Americans as a whole. They are elected by the dominant party faction inside the Congress; and this faction can be hostile to the President. As it is, the President must strain to limit all the gentle arts of political seduction when he tries to swing a majority leader to his cause."



However, it is to be observed that in spite of their independence of each other, there are certain links between the Congress and the President. The President can send messages to the Congress and thereby influence legislation. He can veto the bills passed by the Congress. Likewise, the Congress has control over the President. The President can declare war only with the consent of both Houses of the Congress. He can enter into treaties but those must be ratified by the Senate. In certain cases, appointments made by the President require ratification by the Senate.

The relations between the Congress and the President have not always been happy. Difficulties have always been there. At times relations have become so bad that they have condemned each other. President Johnson was impeached in 1868. The relations of President Truman with the Congress often degenerated into mutual name-calling. The foreign policy of President Wilson was wrecked by the Senate. The result was that the U.S.A. did not become even a member of the League of Nations. President Roosevelt was able to lead the Congress in his first years of office under the pressure of depression but not during the years immediately before the entry of America into the Second World War.

In administrative affairs, the President has resisted the encroachments of the Congress by claiming that a large measure of executive authority can be exercised by him free from legislative interference. President Jackson and Congress fought over the assertion of the President that he could control the policy of the Treasury Department despite legislation that appeared to make the Department primarily an instrument for carrying out the financial powers of the Congress. President Cleveland and the Senate fought over the refusal of the President to allow the Senate to see papers relating to the suspension of government employees. In 1954, Senator McCarthy demanded that employees of the national government should not be restrained by the President from giving information about executive decisions and personnel to the Congress. To quote him, "I would like to notify those 2 million Federal employees that I feel it as their duty to give us any information which they have about graft, corruption, communism, treason and that there is no loyalty to a superior officer which can tower above and beyond their loyalty to their country." The reply of President Eisenhower was in these terms: "The executive branch of the government has the sole fundamental responsibility under the Constitution for the enforcement of our laws and presidential orders. They include those to protect the security of our nation which were carefully drawn for this purpose. That responsibility cannot be usurped by any individual who may seek to set himself above the laws of our land or to override the orders of the President of the United States to Federal employees of the executive branch of the Government." The select committee of the Senate which proposed the censure of McCarthy for some of his words and actions recognised that the



Congress should show respect for reasonable executive regulations dealing with the disclosure of confidential or classified information. It pointed out that Federal employees who disregarded them ran the risk of incurring penalties. However, the select committee agreed with McCarthy that the Congress had the right to obtain "any information even though classified, if it discloses corruption or subversion in the Executive Branch." The committee did not recommend censure on that point but suggested that the leaders of the Senate should confer with executive officers about the procedures for giving confidential data to Congress. In the Myers case, it was held by the Supreme Court of America that the President had the right to dismiss an executive official who had been appointed with senatorial consent without consulting the Senate about his dismissal. In the case of *In Re Neagle*, the Supreme Court held in 1890 that the President could order an officer to enforce not only the acts of Congress but also "the rights, duties and obligations growing out of the Constitution itself, our international relations, and of the protection implied by the nature of the government under the Constitution." The use of independent executive authority goes very far in time of war. The decision of the *Youngstown Steel Seizure* case of 1952 gives the Congress only an illusory protection from the attempts of the President to make policy on his own.

A perennial source of disagreement between the President and Congress is due to the fact that the President represents the whole of America and the Congress only its parts. At present, the President depends primarily on the support of voters and most of the Congressmen depend on the support of rural and small town voters. The President and Congress represent respectively the post-1933 and pre-1933 aspects of American politics. The difference is greater when the President is a Democrat because a Democratic President is even more dependent on urban support than a Republican one, but the division between presidential and congressional politics exists in both parties.

Both the President and Congress have strengthened the institutions of conflict. The use of the executive office of the President instead of the cabinet to co-ordinate administration has protected the irresponsibility of the President. The President has tried to develop his independent powers as well as his influence in Congress. On the other hand, the Congress reformed itself in the Legislative Reorganisation Act of 1946 that cut back the growth of the standing committees and expanded the staffs of the committees, the Legislative Reference Service of the Library of the Congress and the offices of the Legislative counsels of the two Houses. Congressmen hope to make their own organisation efficient and expert and thus reduce their dependence on executive guidance. They seek to develop their independence.

On the whole, American Congressmen accept a large measure of presidential leadership only when they feel strongly that something must be done. Then they are willing to face the fact that

on the whole the President, as head of the national administration, is in a better position to give the lead to the country than they can do. They accept presidential guidance in grave, sharply defined crises like those produced by the great depressions of the early 1930's and the Russian threat of the late 1940's, though they insist that the President should justify his proposals. However, when a sense of crisis is lacking or when the crisis is not clearly defined, Congressmen are less willing to give their support. It is easier to win congressional approval of remedial than of preventive measures. It is easier to get the approval of the Congress for the Marshall Plan than for the Point Four programme.

The result is that the President often tries to win approval of his proposals from the Congress by imparting a sense of immediate need. He makes it appear that the American policy is determined in a succession of panics. Reference may be made in this connection to the attempt of Eisenhower administration to create a sense of crisis in Congress and the country about the Indo-Chinese situation in 1954. "The truth is that American presidential-congressional co-operation works best in crisis, real or artificial, with the result that the current long continuous international tension tends to be treated as a series of short discrete crisis to which the American political system responds. What is required, then, is a more satisfactory continuous relationship between the President and the Congress so that the President may exercise a steady guidance in congressional 'consensus'. Formal amendments to the Constitution are extremely unlikely to be adopted. But an increase in the President's political influence in Congress is likely to develop from the slow growth of urban post-1933 influence in congressional politics."

### Process of Law-making

As regards the process of law-making in the U.S.A., nothing is easier than to give a bill its start. Whether a bill be public or special or private, all that is required to introduce it is that a copy of it, endorsed with the name of the member introducing it, has to be dropped into a box on the desk of the clerk. Any bill may make its first appearance in either House, except only that bills for raising revenue are required by the constitution to originate only in the House of Representatives. However, through its right to amend revenue bills even to the extent of substituting new ones, the Senate may, in effect, originate them also. Once introduced, a bill continues "alive" throughout the duration of the existing Congress or until sooner disposed of. In a succeeding Congress, it can come on the calendar only by being reintroduced.

All bills introduced are given a serial number. They are printed and referred to one or another of the standing committees. Such private bills as still may be presented are sent automatically to the committee suggested in each case by the sponsor of the bill. Public bills are sorted out and assigned according to the



subject with which they deal, nominally by the Speaker, actually by his assistant and adviser, the parliamentarian. Sometimes, a bill is of such a nature that it can be referred to any one of two or more committees. In such a case and also in all cases of doubt, the Speaker is likely to decide personally what should be done in the matter. A similar authority is possessed by the Speaker in the case of bills received from the Senate. The fate of the proposed legislation is decided at the time a bill is referred to a particular committee. If the committee is friendly, the bill is likely to be passed. If the committee is unfriendly, the bill is doomed from the very beginning. Thus, the Speaker vested with assigning a controversial bill may find himself virtually exercising the power of life and death over the bill. Sometimes, a bill is transferred from one committee to another by a majority vote of the House of Representatives.

Each *standing committee* holds its meetings. Some committees have only a few bills referred to them but there are others to which scores or hundreds of bills are sent every session. Sometimes, the bills referred to the committees are very complicated and thus the committees find themselves crowded for time. To expedite matters, sub-committees, usually consisting of five members, are set up and particular measures or clauses of measures are referred to them. At all events, it is in the committees and more or less behind the scenes that much of the actual record of the congress is written. According to President Wilson, "*Congress in its committee room is Congress at work.*" When a committee receives a bill, it has first to inform itself on its nature and contents and then to decide what to do with it. In most cases, this means nothing more than a cursory glance and the bill is summarily condemned to a lingering death in the files of the committee. A bill here and there may be recognised as having claims to attention and if time permits, it will probably receive consideration. In the case of such a measure, the first requisite is information from which to judge whether legislation on the subject is needed, whether the bill in hand is calculated to meet the need and what results and implications would follow if it were passed. Either by request or on their own initiative, interested officials may appear in person to give testimony and present arguments. The lobbyists also volunteer the information required. If a bill deals with a highly controversial subject or affects a large number of people, the committee has public hearings on it. Arrangements are made for interested individuals or spokesmen of organisations having something at stake, to appear before the full committee and give testimony. Ordinarily, certain persons are invited to appear but opportunity is usually given to others also who desire to put their point of view before the committee. Even paid attorneys can be employed to support or oppose the measures or particular provisions of it.

When all this has been done, a committee goes into executive session on a bill and reaches its conclusion in private. It may report the bill unchanged which is tantamount to recommending



its passage. It may strike out some sections, and others or alter the phraseology and report the measure in an amended form. It may re-write the bill completely and present the result as its substitute. In all of these cases, the report is likely to lead to favourable action by the House, particularly, if the committee has come to a unanimous decision and neither the rules committee nor the Speaker interposes obstruction. It is also possible that the committee may not report at all. In other words, the committee may "*pigeonhole*" the bill. This fate is shared by three-quarters or more of all measures introduced. The case with which a committee can kill a bill by simply not reporting on it create a lot of unpleasantness. It is pointed out that committees are only the agents of the House and as such are subject to its orders and instructions. If the House desires to discharge a committee from the further custody of a bill, it has full legal power to do so, but it is not always possible to do so in actual practice.

When the bill is reported back by the committee, it is placed, in accordance with its nature, in one or another of three lists known as "calendars". All bills are not invariably called up from the calendars in the order in which they are listed. All calendar-ed bills are not actually debated and voted upon. With nearly a score of standing committees reporting on bills, the calendar grows congested. The best that the House can do is to pick up a bill here and there for adoption by unanimous consent. In the case of more controversial bills, the House makes sure that the most essential bills like appropriation bills are included and the rest are allowed to take their chance. In very many cases, the bills are not taken according to the calendars. Most important bills are lifted out of their sequence on the lists and put in a preferred position. If that is not done, there may not be any chance of their being taken up at all. Hundreds of measures "die on the calendars" in every Congress.

There is a daily order of business duly prescribed in the rules. However, exceptions and suspensions often make them of very little value. Fixed days are set aside for certain classes of measures and for measures called up under a special procedure known as "Calendar Wednesday" when standing committees having custody of various sorts of unprivileged bills may be given a chance to report. Certain standing committees, such as the Rules Committee, are privileged to report virtually at any time and request the immediate consideration of whatever is reported. On specified days, the House may, by two-thirds majority, suspend all rules and depart as widely as it likes from the regular procedure. It can go even to the extent of passing a bill through all of its stages at a single vote, or at any rate, on the same day.

The sessions of the committee of the Whole occupy the greater part of the time of the House of Representatives. Technically, there are two committees of this kind, viz., a Committee of the Whole House for the consideration of private bills and a Committee of the Whole House on the State of the Union for considering



public bills. The Committee of the Whole has a special procedure for its working. A member moves that the House resolve itself into the Committee of the Whole for the consideration of a designated bill. The motion is put and passed. The Speaker yields the chair to a special chairman whom he designates. A hundred members constitute the quorum. Debate proceeds under a rule allowing five minutes to each speaker at a time. However, more time can be given by unanimous consent. There is no waste of time of the House by the counting of votes. Motions to refer or to postpone the bill under discussion are not permitted. When the discussion is completed, the committee votes to rise and the Speaker resumes the chair. The mace is resorted to its place. The House must act upon the report of the committee in order to give it effect. The procedure of the Committee of the Whole enables all financial and most other important bills to be considered in a happy atmosphere. A large number of amendments can be presented, explained and disposed of speedily. The procedure facilitates critical debate which commonly shows the House at its best. The absence of recorded yeas and nays enables the members to register their sentiments without check or restraint.

Except when disposed of under unanimous-consent procedure, a bill or joint resolution can be adopted only after three readings. The first reading is by title only. Strictly speaking, it is not a reading at all. The requirement is fulfilled by printing the title in the Congressional Record and the Journal. After that the bill goes to a committee. If reported back, it is placed upon its calendar for a second reading. The second reading is an actual reading in full, with opportunity for debate and amendments to be offered, whether aimed at strengthening the bill or weakening it and perhaps achieving its defeat. The second reading takes place in the Committee of the Whole or in the House itself if the bill has not been considered. It can be dispensed with by unanimous consent or by the suspension of the rule. It is followed by a vote on the question: "Shall the bill be engrossed (i.e., reprinted as amended) and read a third time?" If this stage is passed successfully, the third reading takes place, with a vote then taken on final passage. The third reading is by title only unless a member demands a reading in full. If the result of the voting on the third reading is favourable, the bill or the resolution is duly signed by the Speaker and sent to the Senate if it has not already passed it, or to the President of America for his consent. Normally, a debate takes place only on the question of ordering a bill to a third reading, although it may be removed on the question of final passage. When a measure reaches the stage in which it can be discussed on the floor, the chairman of the committee reporting it speaks in its behalf. He is followed by a minority member if the report is not unanimous. Other members of the committee speak alternately for and against the bill. When their list is exhausted, the non-committee members are allowed to take part in the debate if there is still time. The problem of time is a great headache and various methods are followed to save the same.



When the bill has been passed by the House of Representatives, it is sent to the Senate where a procedure similar to that of the House of Representatives is repeated. Whether coming from the House of Representatives or originating in the Senate itself, the measure is referred to one of the standing committees. If it is acted upon favourably, it is reported. If it is reported, it is put on the single "calendar of business" which the Senate maintains. The bill can be called up from the calendar either in or out of its turn. The bill has to pass through three readings and it is the second reading which is the most critical. Tellers are not employed at the time of voting. The bill may be adopted as it stands, or adopted with amendments or rejected.

There are some important differences between the Senate and the House of Representatives with regard to the making of laws. Whereas the Senate formerly made more use of the Committee of the Whole than the House of Representatives does, it abandoned the device altogether in 1933 save for considering treaties. Moreover, with the exception that appropriation bills enjoy a certain priority, there is virtually no privileged business in the Senate, leaving the calendar to be followed automatically or with transposition of bills as desired. There is no effective arrangement for limiting debate in the Senate except when the members can agree among themselves to restrict the same.

When a bill has been passed in an identical form by both the Houses, it is "enrolled", i.e., written or printed on parchment. Then it is signed by the presiding officers and sent to the President of America. If he approves of it or if it becomes law without his signatures, it is transmitted to General Services Administration to be deposited in the archives and also to be published. If it receives a "messaged" veto, it goes back to the House in which it originated and becomes law only if, upon reconsideration, it is passed in both Houses by a two-thirds vote. The bill is killed, if the President applies the pocket-veto.

### **Financial Control**

The Director of the Bureau of the Budget works under the control of the President. He prepares the budget more or less on the English plan with estimates of the appropriations necessary for the different departments of government and a statement of the probable revenues. The budget is submitted to the Congress on the responsibility of the President. It is considered by two Committees of the House of Representatives whose names are the Committee of Ways and Means and the Committee of Appropriations. These Committees report the budget to the House of Representatives which after debate passes the Finance Bill and the Appropriation Bill. The Bills are then sent to the Senate and then to the President of America. It is worthy of note that there is no unified responsibility in matters of finance. It is true that the President submits a unified plan but it is also true that the same can be mutilated both in the Committees and in the Chambers.



That is partly due to the fact that the members of the cabinet and the Director of the Bureau of the Budget do not sit in the House of Representatives or the Senate and, therefore, they have no opportunity to explain their proposals. Another reason is that the members, both in Committees and the Chambers, have the freedom not only to reduce items of expenditure and revenue but also to propose increases or even new items. Another remarkable thing about the system of financial control is that the Senate possesses much greater power than the British House of Lords to modify revenue and Appropriation Bills. It has rightly been said that the control of the Congress over national finance is not only effective but more than effective.

### Committee System in the U.S.A.

The committee system in the U.S.A. has a peculiar importance of its own and that is due to the fact that the U.S.A. has a presidential form of government. In the case of England where parliamentary form of government prevails, most of the legislation is initiated by the ministry in power which controls and directs the work of the parliament. In the case of the U.S.A., neither the President nor the members of his cabinet sit in either House of the Congress. The result is that the Congress is without leadership. It is this fact which gives importance to the committee in the U.S.A. Most of the legislation is initiated by the various committees. When the American President sends a message to the Congress, the various committees frame legislation on various subjects and thus bills originate with them. Moreover, as there is too much of rush in the Congress, the bills are passed in the same form in which they come from the committees. A favourable report by a committee guarantees its safe passage by the Congress and an unfavourable report may result in the death of the bill itself. No wonder, President Wilson described the committees as "*little legislatures*." Speaker Reed described them as "*the eye, the ear, the hand and very often the brain of the House*."

In England, the members of the various committees in the House of Commons are chosen by a Committee of Selection, but in the U.S.A., the party caucuses select a Committee on Committees which selects the members from the various parties for the various committees. In England, bills are referred to the committees after the second reading. In the U.S.A., the bills are referred to the committees before there is any discussion on them in the legislature. In England, the chairmen of the various committees do not get any prominence or publicity, but in the U.S.A., important bills are named after the chairmen of the committees. In the case of England chairmen of committees are impartial but in the U.S.A., a chairman "is a power in his committee and sometimes dominates it."

Reference may be made to the various kinds of committees in the House of Representatives. There is a Committee of the Whole House. As in the case of England, the House of Representatives



transforms itself into a Committee of the Whole for the consideration of the revenues, appropriations and other bills and 100 members form the quorum. This committee is not presided over by the Speaker of the House of Representatives. Bills are critically examined by this committee.

The major work of the legislative process is performed by the standing committees of the two Chambers. Each standing committee is named in accordance with the type of the bills referred to it. In the Senate, the Appropriations, Armed Services, Finance, Foreign Relations, and Labour and Public Welfare Committees are among the 15. In the House of Representatives, the Appropriations, Armed Services, Ways and Means, Foreign Affairs, Education and Labour Rules and un-American Activities Committees are among the 19. Overlapping jurisdiction is inevitable and a part of the parliamentary tactics of the supporters of a bill is to guide the presiding officer or the Chamber so that the bill is referred to the friendliest of the committees which might receive it. The standing committees are bipartisan with their party composition usually roughly proportional to the whole of the House. With a few exceptions, each Senator serves on two standing committees and each representative on one. The Congressmen tend to find places on committees dealing with legislation of particular interest to their constituents. For example, committees dealing with water resources development legislation usually consist of those members of the Congress who come from those states or districts in which water resources policy is important. Likewise, committees dealing with agricultural legislation have a disproportionate number of members from agricultural areas. The result is that the committees are not truly representative samples of the House as a whole.

The chairman of a standing committee is practically always the senior member of the majority party on the committee. If the senior member is already the chairman of another committee, in that case the second senior member of the majority party acts as the chairman. Seniority is determined on the basis of continuous service. The result is that the chairmanships of the important committees are held by Senators and Representatives from safe seats or by "Old Guard" Republicans and Democrats. The chairman has a lot of influence over the conduct of the business of the committee.

Committees may hold hearings in secret or in open. Outside persons may be heard and questioned: Minutes are kept of the hearings. After private discussions among the members of the committees, reports are written and the bills are reported, favourably or unfavourably, to the Congress. On major bills, there are usually majority and minority reports, often prepared without regard to party lines. Usually major bills are reported with substantial amendments and a committee of minority may again take exception. "Administration measures" do not receive any official priority. This is due to the fact that the bills are introduced by



the members of the Congress acting as individuals. However, in actual practice, "administrative spokesmen" often introduce major bills from executive branch which are given unofficial priority.

The important part played by standing committees in the passage of a bill becomes clear if we refer to the legislative history of the Employment Act of 1946 for purposes of illustration. Towards the end of 1944, a "Full Employment" bill was drafted under the leadership of Senator James Murray, a Democrat, and printed in the year-end report of the sub-committee to the full committee. In January 1945, Senator Murray introduced revised version on the floor of the Senate. The supporters of the bill got the bill referred to the Banking and Currency Committee whose Chairman was Senator Robert Wagner, another Democrat who was himself a supporter of the bill. This meant that the public hearings were to be held under friendly auspices. The Banking and Currency Sub-Committee went into executive or private session from which a new version of the bills was reported favourably to the full committee. The version of the sub-committee, amended slightly in executive session of the full committee, was reported favourably to the Senate. The bill, amended further, was passed by the Senate in September 1945.

The "Full Employment" bill was introduced in the House of Representatives by Wright Patman, a Democrat. Here the bill was referred to the hostile Committee on Expenditures rather than the more friendly Banking and Currency Committee or Labour Committee. The Chairman of the Committee on Expenditures was also not friendly to the bill. He believed that America was a Republic and not a Democracy. The result was that the public hearings were conducted in such a way as to help the opponents of full employment legislation. By the time the committee of the House of Representatives went into an executive session, it had three bills to deal with: the original bill as introduced in the House in February 1945, the version passed by the Senate in September 1945 and a bill introduced by Charles LaFollette, a Republican. In spite of that, the Conservative majority in the committee set up a sub-committee to draft another bill. This bill was entitled "Employment and Production" bill and was reported to the whole House in December, 1945. A majority of the full committee supported this version over the opposition of two committee minorities. The measure supported by the majority was passed by the House of Representatives. As the Senate and the House of Representatives differed, a compromise bill was passed by both the Chambers and signed by President Truman in February 1946.

The compromise bill mentioned above was drafted in a joint conference committee. A *joint conference committee* is one of the most important pieces of American constitutional machinery. It is appointed for about one in ten bills that pass both chambers and is usually required for a major bill. Its very name shows that it serves as the means for bringing about a compromise between the



Senate and House versions of a bill when neither chamber is willing to accept the version of the other. It is made up of the members of the two Houses. In practice, the members are usually the senior members of both parties from the standing committees that have dealt with the bill. Both Houses have great difficulty in restraining conference committees which are supposed to change bills only at those points where the two chambers disagree. This has been particularly so in connection with tariff legislation. Conference committees have compromised conflicting rates of duty by setting higher rates than either House and extended protection to commodities after both chambers have denied protection. In 1948, Senator William Fulbright satirically congratulated conferees for "forthrightly disregarding the wishes of common lay members of the Senate and the House." The members of the joint conference committees are able to take liberties particularly towards the end of a session, because their reports often virtually have to be accepted.

Among the most important committees of the Congress are the *Special investigating committees*. One or both of the Houses of the Congress may authorize a special investigation committee to conduct an investigation on its behalf. The first congressional investigation was held in 1792 into a disaster that befell a general who was sent to shoot the Indians. From then until 1925, there were about 300 formal congressional investigations. In the last thirty years, the number has increased. During the first four years of the administration of Roosevelt, there were as many as 165 investigations. Investigations now constitute one of the most famous congressional activities. The methods of congressional committees vary enormously. That is due to the fact that the subjects investigated require different treatments. That is also due to what the committees attempt to do and the different opinions of the persons who serve on them. Sometimes Congressmen seek information directly useful to them in legislation. Sometimes they are after information with no direct legislative purpose in mind. Very often, they intend to give publicity to information as a means of arousing public opinion. Sometimes, they serve the private purpose of a Congressman. In 1942, Representative Cox got himself selected as chairman of a committee to investigate the Federal Communications Commission after the Commission had reported his illegal pressure tactics in connection with its work to the Department of Justice. He was induced to resign from the Committee when the Federal Communications Commission reported to the Speaker that he had accepted a cheque of 2,500 dollars. In spite of that, he was able to persuade the House of Representatives to cut the annual recommended appropriation for the Commission by 25%. Congressmen most interested politically in the investigations serve on the investigating committee. Though they are drawn from both parties, the members of an investigation committee may not at all be representative of the Congress as a whole. The un-American Activities Committee attracts the extreme right-wing in the same way as the investigating of



lobbying by private interests in 1935 attracted Senator Hugo Black. In this, the Congress is fragmented and each small group of Congressmen goes its own way.

According to Potter, "The most objectionable forms of congressional investigating tactics could be prevented by strengthening party government in Congress, so that the majority party could control and take responsibility for the choice of committee chairmen and their methods. Stronger party control would strike a 'congressional courtesy' of all kinds. One unfortunate result would be that desirable investigations of executive activities would be curtailed. Even the small measure of organized party control in the House of Representatives has been enough to make it less effective investigator than the Senate of an administration that is of the same party as the majority of the chamber. On the other hand, the effective party government and responsibility might reduce the need for investigations."

### Gerrymandering

The practice of gerrymandering is a very old one. It took its name from Elbridge Gerry, Governor of Massachusetts, who sanctioned the partisan district-making in his State. John Fiske has given the following account of the incident: "In 1812 while Elbridge Gerry was Governor of Massachusetts, the Republican legislature distributed the districts in such a way that the shapes of the towns forming a single district in Essex County gave to the district a somewhat dragon-like contour. This was indicated upon a map of Massachusetts which Benjamin Russell, an ardent Federalist and editor of the *Sentinel*, hung up over his desk in his office. The celebrated painter, Gilbert Stuart, coming into the office one day and observing the uncouth figure, added with his pencil a head, wings, and claws, and exclaimed, 'That will do for a salamander!' 'Better say a Gerrymander!' growled the editor; and the outlandish name, thus duly coined, soon came into general currency."

The principle behind the gerrymander is a simple one. "In districting a State or City, separate the majorities of your own party over all or over as many districts as possible. Few have not enough votes to control every district, concentrate the strength of her opponents in as few districts as possible, so that it will do them the least good." Many laws have been passed to put an end to this practice, but the temptation has been so great that it has been difficult to resist it. Even the statutory requirement of 1929 that the States were to be divided into Congressional districts composed of contiguous and compact territories did not deter the legislative majorities from "mapping out shoe-string", "saddle-bag" and "dumbbell" districts with a view to give the largest number of seats to the controlling party at the next elections. The Congress has also not intervened in these matters. The only restriction is that imposed by the force of public opinion and certain provisions in State Constitution. It is to be noted that popular senti-



ment has slowly and gradually grown against the gerrymander and gerrymandering has often proved a boomerang to the party resorting to it.

### Floor Leader

The position of the floor leader in the House of Representatives is next to that of the Speaker. According to Prof. Beard, "It is his duty to keep in close touch with the rank and file of his party colleagues, to learn their opinions, to understand their prejudices and ambitions, and whenever necessary to line them all up in support of some measure on which the party leaders have reached a decision. The floor leader is influential in determining who shall speak on bills, because by conference with party members he helps to make up the list of members whom the Speaker will recognise. In important measures the majority leader will take counsel with the minority leader and reach an agreement as to when the vote shall be taken on them and who is to speak for the minority. In short, the floor leader has succeeded to many of the prerogatives formerly exercised by the Speaker; in terms of power he ranks next to the Speaker; and if he is clever in management he may hope to rise to the honour of presiding over the House....He is subject more or less to the direction of the 'steering committee' chosen by the caucus, i.e., by 'natural selection' for the purpose of exercising general supervisory power—an informal group of seven or eight persons who operate quietly behind the scenes."

### Lobbying

The institution of lobbying has come into existence in the Congress on account of the absence of the leadership of the Cabinet in the Congress. There is no lobbying in England because the majority party in the House of Commons forms the ministry and the latter is responsible for initiating legislation and getting the same through. A large number of groups are formed in the U.S.A. for the purpose of advancing or opposing measures in which they are interested and their activity is called lobbying. Whenever a bill is placed before the Congress the conflicting interests pull in the opposite directions. Those who are likely to gain by the passage of the bill, advocate its adoption and those who are likely to be affected adversely, oppose it vehemently. Every kind of influence is exercised on the members of the Congress either for or against the bill. It is pointed out that a large number of the organisations in the U.S.A. are represented in the Lobbies of the Congress and most important of them are the American Association of Railway Executives, the American Federation of Labour, the National Petroleum Association, the American Farm Bureau Federation, the Chamber of Commerce of the United States, the American Legion, etc. Very clever agents are employed by them to achieve their objectives. Sometimes, ex-Senators and ex-Congressmen are employed for this purpose. By means of letters, telegrams, telephonic calls, articles in the press, personal contracts, and sometimes by means of bribery, they bring pressure on the members of the Congress.



No student of American politics can deny that lobbying plays an important part in moulding the opinions of the members of the Congress.

The aim of lobbying is legitimate and we cannot quarrel with it. Every one has the right to try to secure favourable legislation and prevent harmful legislation from coming on the Statute Book. However, an objection can be raised against the methods used to influence Congressmen if those methods go beyond talking or persuasion, the presentation of arguments, etc. Bribery and intimidation must not be tolerated, whether open or indirect. Lobbying may also be criticized on the ground that it gives some organisations too much influence in the making of laws which is out of proportion to their numbers or importance in the country. A group may represent only a small proportion of the population and only a small part of the economic life of the country and yet it may have a powerful lobby headed by a lobbyist of unusual ability, furnished with ample funds to maintain a large research staff. Another objectionable aspect of lobbying is the secrecy which surrounds it so far as the general public is concerned. Often the public is completely unaware that lobbying is going on or who is behind it. However, the law requires that all lobbyists in Washington must register themselves, giving the name of the organisation which is employing them and the salary or fee paid for their services. This gives a considerable publicity to the general public concerning the activities of the lobbyists in Washington.

### Filibustering

Filibustering tactics are those tactics which are employed to delay or prevent the passage of a bill which is not liked by the party opposing it. In a narrow sense, the practice of filibustering implies the misuse of the privilege of unrestricted freedom of debate with a view either to delay the passage of the bill or to prevent it from being passed. Filibustering tactics may be employed by an individual or a group of individuals. It is stated that in 1903, Senator Fillman started reading from Lord Byron's *Childe Harold* and declared he will continue to do so till such time as the provisions opposed by him were dropped from the bill under discussion, and he won his point.

"Near the end of the 64th Congress (March 1917), a small group of Senators filibustered to prevent the Senate from taking a vote on a bill to give the President authority to arm American merchant vessels for defensive purposes, notwithstanding the fact that nearly all the other Senators desired to pass the bill." The all-time record for continuously holding the floor was achieved in 1953 by Senator Wayne Morse of Oregon, who, with little help from questioners, talked for 22 hours and 26 minutes.

The number of filibusters is very large in the Senate. A check had been put on filibustering by law. It was provided that a debate in the Senate could be brought to an end if a motion was

put forward by 16 Senators and approved by a two-thirds majority of the Senate.

In January 1959, a further change was made by the Senate by 72 votes against 22. The present position is that a filibuster can be stopped by a two-thirds majority of members actually attending a debate and voting, whereas previously it was necessary to secure a two-thirds majority of the total number of Senators to force an issue to a vote. The adopted proposal was put forward by Senator Johnson, a Democrat. The Southerners have so far successfully talked out bills aimed at guaranteeing voting and other civil rights for Negroes.

Although the practice of filibustering has been ridiculed and denounced from many quarters, it is maintained that in spite of the time consumed by the filibuster, the Senate manages to pass a large number of laws. It is also pointed out that by far the greater portion of the measures killed by filibustering are not favoured by the country and are never revived. Moreover, the figures produced against filibustering come usually from those members of the Senate whose pet projects are defeated and who are always ready to plan and launch filibusters of their own.

### SUGGESTED READINGS

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|----------------------|--|
| <i>Brogan, C.</i>    | : The American Political System, 1947.                             |
| <i>Galloway</i>      | : Congress at the Cross-roads.                                     |
| <i>Haynes, G. F.</i> | : The Senate of the United States: Its History and Practice, 1938. |
| <i>Juce</i>          | : Legislative Procedure.   |
| <i>Rogers</i>        | : The American Senate.   |
| <i>Wilson, R.</i>    | : Congressional Government.  |
| <i>Young, R.</i>     | : This is Congress, 1943.  |



## CHAPTER 13

### SUPREME COURT OF THE U.S.A.

According to Lord Bryce, "No feature of the Government of the United States has awakened so much curiosity in the European mind, caused so much discussion, received so much admiration, and been more frequently misunderstood, than the duties assigned to the Supreme Court and the functions which it discharges in guarding the are of the Constitution."

The American Constitution does not fix up the number of the judges of the Supreme Court and the same has varied from time to time. In 1789, the Congress provided for a court of six judges, in 1801 five, in 1807 seven, in 1837 nine and in 1863 ten. In 1866, it provided that if a member died or retired from the court the membership was to be allowed to drop to seven. However, in 1869, it provided for a court of nine judges. The membership has remained constant since although if the Court Plan of 1937 of President Roosevelt had been accepted, the number would have varied between 9 and 15. All the judges are appointed by the American President but their appointments have to be ratified by the Senate. Some of the recommendations made by the Presidents have been rejected. In 1930, President Hoover nominated John Parker, a Republican. His nomination was rejected on account of his anti-trade union bias. His anti-Negro statements also stood in his way. While making appointments, the Presidents have regard for the sectional and religious composition of the court. Appointments are usually made on party lines. Judges of the Supreme Court hold office for life. However, they can be removed by impeachment. Only one Supreme Court Judge has been impeached so far and that

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1. The variations in the size of the Supreme Court have been described in these words:

- 1789. Congress decided at first to fix  
The number of justices at six.
- 1801. Congress planned on the change to five  
But the six remained very much alive.
- 1807. Six high judges, supreme as heaven—  
And Jefferson added, number seven.
- 1837. Seven high judges, all in a line—  
Two more added, and that made nine.
- 1863. Nine high judges were sitting when  
Lincoln made them an even ten.
- 1866. Ten high judges, very sedate;  
When Congress got through there were only eight.
- 1869. Eight high judges who wouldn't resign,  
Grand brought the figure back to nine.
- 1937. Would a justice feel like a packed sardine  
If the number was raised to—say—fifteen?

was in the case of Samuel Chase in 1804-5. Even in his case, the attempt failed.

Out of the 90 men who have served on the Supreme Court of America, a few have been exceptionally able judges, many have shown adequate ability and a few have been of poor calibre. As judges work in an exceptional environment, that gives them the appearance of dignity and integrity. The judges of the Supreme Court have been comparatively immune from the worst forms of personal attack. Sometimes, one judge may attack another judge. In 1946, Justice Jackson criticised Justice Black.

The appointments of the judges of the Supreme Court are made on political grounds.' A Democratic President ordinarily appoints only a Democrat as a judge of the Supreme Court. Sometimes, a departure may be made from the general practice. President Hoover who was a Republican, appointed a Democrat as a judge of the Supreme Court. President Roosevelt appointed all the judges of the Supreme Court from his own party. When the Supreme Court invalidated the National Recovery Administration Act and the Agricultural Adjustment Act which formed a part of the New Deal legislation, President Roosevelt decided to reform the constitution of the Supreme Court itself. He proposed to the Congress to increase the number of judges to 15 so that the opposition of the 5 reactionary judges opposed to the New Deal legislation may be overcome. However, there was a lot of criticism against the move of the President and the proposal fell through.

Great importance is attached to the appointment of a judge of the Supreme Court. There is as much of activity as is to be seen in England at the time of the formation of the new Cabinet. Great care is taken to appoint men who really possess great legal knowledge and integrity of character. It is not forgotten that "bad judicial appointments bring more discredit on the appointing power than any other executive mistake."<sup>2</sup>

All the nine judges sit together to dispose of cases. Cases are heard on Tuesdays, Wednesdays, Thursdays and Fridays. Saturdays are devoted to consultations among the judges and on Mondays the judgements are given in public in the court. The presence of at least 6 judges is necessary to pronounce a judgment. While this system secures a thorough consideration of the case, it slackens the disposal of work.

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1. Most of the judges of the Supreme Court have been great lawyers, professors of law, public men and Consultants to administrative agencies. Most of them are the products of Harvard, Yale and Princeton Universities.

2. According to De Tocqueville, "The Federal Judges must not only be good citizens, and men possessed of that information and integrity which are indispensable to magistrates, but they must be statesmen-politicians not unread in the signs of the times, not afraid to brave the obstacles which can be subdued, nor slow to turn aside such encroaching elements as may threaten the supremacy of the Union and the obedience which is due to the laws." And he added, "If the Supreme Court is ever composed of impudent men or bad citizens, the Union may be plunged into anarchy or civil war."



The Supreme Court sits from October to June every year. Its meetings are held at Washington. Its work is done in rigid silence and with great punctuality. The Chief Justice gets a salary of 25,500 dollars annually and the other judges get a salary of 25,000 dollars each. In addition to their judicial work, the judges of the Supreme Court do the work of supervision over the 10 circuit courts which have been created by the American Congress and which cover the whole of the area of the U.S.A.

### Powers of the Supreme Court

The Constitution provides that "judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States and treaties made or which shall be made under their authority; to all cases affecting ambassadors or other public ministers and consuls; to all cases of Admiralty and marine jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof, and the foreign States, citizens or subjects." Again, "In all cases affecting ambassadors, other public ministers and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exception and under such regulations as the Congress shall make."

*Appeals* are taken to the Supreme Court when any national court declares a national law invalid in a civil action involving the United States or its officers; when a national District Court, for example, declares a national or state law invalid in a civil action or restrains the enforcement of the order of Inter-State Commerce Commission in a civil action brought by or against the United States; when a national Circuit Court of Appeals declares a state law invalid; and when a state court of last resort rejects a claim that a state law is invalid or declares that a national law or treaty is invalid. The Supreme Court also answers questions of law arising in cases before and certified by the national Circuit Courts of Appeals or the national Court of Claims. Three of the 88 cases which came to the Supreme Court in 1952-53 by right of appeal were on certificates from Courts of Appeals. The Supreme Court has discretion to take a case on writ of *certiorari* in a great many circumstances. With extremely few exceptions, the Congress has granted it a discretionary right of review in cases that somehow fall within the national judicial power as defined in the national Constitution.

The Supreme Court is the highest court of each state system for what are known as federal questions. Federal questions involve some right or immunity claimed under the national constitution, laws or treaties. The great majority of cases in the U.S.A.

do not raise federal questions, but the some that do allow the national courts to help shape the framework of state justice. The Fourteenth Amendment which prohibits a State from depriving a person of life, liberty or property without due process of law gives the Supreme Court of America a good deal of influence over the judicial procedure of the States.

A reference to the work of the Supreme Court shows that in 1952-53 it ruled on the merits of 198 cases in 110 full opinions and 61 memorandum orders. It refused to rule on several times that number of cases. Petitions for the writ of *certiorari* enable the Supreme Court to examine most of the claims put to it and to sift out those it hears. The writ is granted on the affirmative vote of four of the nine judges, though after argument it can be dismissed by a majority of the court. In 1952-53, out of the 198 cases heard, 88 came before the court by right of appeal and 110 by writ of *certiorari*, 49 cases came directly from national District courts, 86 from circuit Courts of Appeals, four from other national courts, and 59 from the state courts. No case came before the Supreme Court under its original jurisdiction.

It is to be observed that the Original Jurisdiction of the Supreme Court is very rarely invoked. Diplomatic personnel are almost invariably exempted from its jurisdiction by international law. Cases involving consular personnel without diplomatic immunity and in which a State is a party, may be tried by other courts which have concurrent jurisdiction. Before the time of Mr. Taft as Chief Justice, too many appeals were taken to the Supreme Court but his reform of 1925 has removed that pressure also. At present the Supreme Court is much more concerned with general rules which guide not only the work of the lower courts but also to some extent the work of other branches of the government, than that of trying cases. The scope of its rule-making authority makes it a *political institution of great importance in the American government system.*

The Supreme Court does not perform advisory functions. It has refused to advise the Government on abstract points. It acts only when a specific case is brought before it. In this respect, the Supreme Court of America differs from the Supreme Court of India which has to perform advisory functions also.

### Judicial Review

The Supreme Court has the power of *judicial review*. The American Constitution did not expressly give the power of judicial review to the Supreme Court. Article VI. on which the authority of the Supreme Court to pronounce upon the validity of a statute is presumed to rest runs thus: "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary not-



withstanding." This Article does not clearly state that the Supreme Court can invalidate laws passed by the Congress or the State Legislature. The only phrase which lends some justification to the doctrine of judicial review is "in pursuance thereof" which may be interpreted to mean that only those laws which are compatible with the Constitution are the fundamental laws of the land. This is how Hamilton and Marshall C. J. interpreted it.

Acting under a law of California, the city of San Francisco passed in 1876 an Ordinance directing that every male imprisoned in the county jail should immediately on his arrival have his hair clipped to a uniform length of one inch from the scalp. "The Sheriff, having, under this ordinance, cut off queue of a Chinese prisoner, Ho Ah Kow, was sued for damages by the prisoner and the court held that the ordinance had been passed with a special view to the injury of the Chinese who then considered the preservation of their queue to be a matter of honour and that it operated unequally and oppressively upon them, in contravention of the Fourteenth Amendment to the Constitution of the United States, declared the Ordinance invalid and gave judgment against the Sheriff."

A law passed by the Congress in 1876 provided "Post Masters of First, Second and Third class shall be appointed and may be removed by and with the advice and consent of the Senate, and shall hold their offices for four years unless sooner removed or suspended according to law." President Wilson, without consulting the Senate, removed in 1920 Mr. Myers, First Class Post Master at Portland, whom he had appointed in 1917 for four years. The Supreme Court upheld the unfettered power of removal possessed by the President and declared the law which made Senate's consent necessary for removal from office, as unconstitutional.

With a view to restrict child labour in factories, the Congress prohibited in 1916 inter-state trade in goods produced by child labour. While doing so, the Congress relied upon a clause in the Constitution which gave it the power to regulate inter-state trade. The view of the Supreme Court was that it was not proper for the Congress to use the Commerce power for the purpose of regulating industry and so the law passed by the Congress was declared unconstitutional. In 1919, the Congress tried to restrict child labour in factories while resorting to its taxing power but that law was also declared null and void by the Supreme Court.

In the case of *Marbury v. Madison*, the Congress had provided in the judicial Act of 1789 that requests for writs of Mandamus could be made to and granted by the Supreme Court. On the night of 3rd March, 1801, Marbury was appointed a justice of peace for the District of Columbia by President Adams whose term of office expired before the commission for the same was delivered to him. The new President and Secretary of State refused to deliver the commission to Marbury. The result was that Mr. Marbury petitioned the Supreme Court for a writ of Mandamus. It was held by Mar-



shall C. J. in 1803 that Marbury was entitled to the commission but the Supreme Court has no authority to issue the writ prayed for as the Act of 1789 which empowered it to do so violated the American Constitution and was in itself null and void. According to Marshall C. J., the written Constitution of America clearly defined and limited the powers of the government. The Constitution was the fundamental law of the country and was superior to the ordinary laws passed by the Congress. (Any law passed by the Congress which was opposed to any provision of the Constitution, was null and void and was not binding on the court. It was the duty of the courts to declare any law illegal and void if it violated any provision of the Constitution.)

The importance of this power was emphasised by Justice Oliver Wendell Holmes in these words: "I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do not think the union would be imperilled if we could not make that declaration as to the laws of the several States. For one in my place sees how often a local policy prevail with those who are not trained to national views."

It is agreed that the Supreme Court should have the power to declare the laws passed by the State legislatures and the Congress *ultra vires* if they conflict with the Constitution. However, a difficulty arises when the Supreme Court finds that an Act conflicts with the Constitution while most of the members of other branches of the government think otherwise. The advocates of the principle of co-ordinate branches of government contend that each branch has a right to interpret the meaning of the Constitution for itself. President Jefferson wrote thus in 1819: "Each department is truly independent of the others and has an equal right to decide for itself what is the meaning of the Constitution in the cases submitted to its action; and especially where it is to act ultimately and without appeal." President Jackson wrote thus in 1832: "The Congress, the Executive and the Court must each for itself be guided by its own opinion of the Constitution. The opinions of the judges have no more authority over Congress than the opinions of Congress have over the judges, and on that point the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacity, but to have only such influence as the force of their reasoning may deserve."

The Supreme Court has not set aside the judgment of the Congress in many cases. It has invalidated the provisions of the national laws in about 80 cases. In most of these cases, only a part of a statute has been declared void. Only 8 or 10 statutes have been held unconstitutional in their entirety. Since 1789, the Congress has passed over 70,000 Acts of which over 30,000 have been public Acts. Statistically, the incidence of judicial review on congressional legislation has been extremely slight. However, the exercise of the power of judicial review has other indirect consequences. When the Supreme Court declared in the 1870's and



1880's that national executive action and legislation protecting the rights of Negroes from the private acts of White Southerners exceeded the constitutional powers of the nation, it inflicted great hardships on the newly freed slaves for a long time. When the Supreme Court declared a national income tax law void in 1895, the national government could not make use of this revenue for two decades. (When the Supreme Court ruled in several cases that the Congress could not regulate the production of commodities that flow in inter-State commerce, it crippled national efforts to strike at child labour and other widely condemned labour practices until after 1937 the decisions were over-ruled. The Supreme Court not only held the particular Acts void but also discouraged the Congress from passing others.)

In the 1930's, the Supreme Court pushed this power of judicial review to the breaking point. In 17 months it held void all or parts of 11 major national Acts dealing with the problem of depression. The whole course of the New deal was threatened by the decisions of the Supreme Court. President Roosevelt was annoyed and he threatened to hit back, but the threat was not carried out.

One lesson to be drawn from the events of 1937 is that a direct challenge to the independence of the Supreme Court is politically dangerous. (It is a part of the act of judicial statesmanship not to obstruct the elected branches of the government too much.) When the Supreme Court struck down liberal social legislation in the 19th and early 20th centuries, it did so at a time when the country was sharply divided on its merits and many members of the political branches were able to support liberal measures in principal but pointed out that the Constitution did not permit them. However, when the Supreme Court struck down liberal legislation in the 1930's it did so at a time when the electorate had endorsed the New Deal by a large majority and most members of the other branches of the government believed firmly in their necessity. In this context, the Court had very little scope to review legislation. The prime function of the interpretation of the Constitution by the Supreme Court is to rationalise the exercise of governmental powers under a Constitution which is hard to amend. The Supreme Court is in effect a *constitutional convention*. So long as it performs its functions moderately well, it enjoys great prestige and a fair measure of powers. However, when it refuses to do its job, its prestige falls and the elective branches begin to put pressure on it. There are many ways in which judicial decisions can be made responsive to public opinion and the best is to develop a tradition of judicial self-restraint. The Supreme Court on the whole should accept the spirit of the argument of Jackson and Jefferson. Justice Holmes preached judicial self-restraint in his dissenting opinions. In the case of the *United States v. Butler*, Justice Stone observed thus in 1936: "Courts are not the only agency of government that must be assumed to have capacity to govern."



In 1937, the Supreme Court upheld the Wagner Act which established the National Labour Relations Board and has been called the Magna Carta of organised labour in the United States. In this case, the Supreme Court established on a firm footing the power of the Congress to regulate the labour-management relations in major industries. (In 1954, the Supreme Court gave its verdict against the practice of the Southern States in placing white and Negro pupils in separate schools.)

In the case of *Atkins*, Mr. Justice Sutherland observed that "there are limits to power and when these have been passed, it becomes the plain duty of the courts in the proper exercise of their authority, to so declare." According to Brogan, Mr. Justice Sutherland "defined the role of the court in a way that a radical critic could hardly have bettered." According to Boudin, "The announcement that the court had constituted itself into a super-legislature is perhaps plainer than in any other case."

### Doctrine of implied powers

The doctrine of implied powers was devised by Chief Justice Marshall, who occupied the Bench for a long time and who was "a product of the same times as the Constitution itself and so knew the intent of the framers. When close questions arose, he was able to determine how the hairs should be split for the good of the country, and in the opinion of some of his contemporaries strained the precise letter of the great charter in some of his decisions." His decisions became as sacred as the clauses of the Constitution itself.

In 1791, the Congress authorised the establishment of the Bank of the United States. This was done although many states were opposed to it. The Bank was authorised to operate throughout the United States of America by means of its branches and a branch was opened at Baltimore in the State of Maryland. In 1818, the legislature of Maryland imposed the stamp tax on the circulating notes of all banks or their branches located in the State and not chartered by it. The Baltimore branch of the Bank of the United States refused to pay the tax. The result was that the State of Maryland sued the Cashier of the Bank, Mr. McCulloch. The case was decided in favour of the State of Maryland and the Bank went in appeal to the Supreme Court. The latter decided that the Congress had an implied power to start the Bank and, therefore, the State law was illegal and against the Constitution. To quote, "This government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising and will probably continue to arise as long as our system shall exist. The powers of government are limited and its powers are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers



are to be carried into execution, which enable that body to perform the high duties assigned to it in a manner most beneficial to the people.

"Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are plainly adapted to that end, and which are not prohibited but consistent with the letter and spirit of the Constitution, are constitutional."

In the case of *Dartmouth College*, Marshall C. J. took advantage of the constitutional clause denying to the State power to enact laws "impairing the obligations of contracts" to declare invalid an Act of a State Legislature which amended the charter of the Dartmouth College given by the Crown during the colonial days. Marshall extended the meaning and scope of the contract clause to bring all the Corporations under the control of the Federal Government. In the case of *Gibbons v. Ogden*, Marshall made use of the "commerce clause" to declare invalid a law of the New York State Legislature giving to some persons the exclusive right to navigate New York waters in the steam boats. To quote Marshall, "*Commerce undoubtedly is traffic but is something more; it is intercourse.*" It is pointed out that this case is a landmark in the economic history of the U.S.A. and it not only facilitated inter-State communications but also expedited the economic integration of the country. Chief Justice Taney emphasized the importance of the doctrine of implied powers in these words: "If in this court we are at liberty to give old words new meanings when we find them in the Constitution, there is no power which may not by this mode of construction be conferred on the Federal Government and denied to the States."

In the case of the *United States v. Darby*, the Supreme Court remarked thus in 1941: "The power of Congress over inter-State commerce is not confined to the regulation of commerce among the States. It extends to those activities which so affect inter-State commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate inter-State commerce." In the case of *Wickard v. Filburn* (1942), the Supreme Court held that "even if (an) activity be local and though it may not be regarded as commerce, it may still whatever its nature, be reached by Congress if it exerts a substantial economic effect on inter-State commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as direct or indirect." According to K. C. Wheare, the Supreme Court of the U.S.A. "has adopted the commerce power of Congress to all the demands of the economic, commercial, industrial, and transport revolutions of the past one hundred and fifty years." (*Modern Constitutions*, p. 159.)

According to Dean Alfrange, "When Marshall assumed office at the dawn of the nineteenth century, the Union was still a new world struggling to be born. The States and their governments were a living reality, while the Federal Government was some-



thing new, alien and shadowy, a blue print of aspiration and possibilities rather than a going concern." It goes to the credit of Chief Justice Marshall who was a Federalist and a believer in nationalism as against the State rights that the powers of the Federal Government were increased by the doctrine of implied powers and the commerce clause. However, it must not be forgotten that Marshall's successor Taney was a champion of the State rights. He interpreted the Constitution strictly, repudiated the doctrine of implied powers and invoked the "police power" of the State to extend jurisdiction.

*Due process of law*  
 The judges of the Supreme Court have interpreted the clause "due process of law" to mean what is reasonable and just. Consequently, if a State passes a law which the judges of the Supreme Court think unreasonable, unwise or unjust, they can declare it unconstitutional on the ground that it is against the due process of law.

### Supreme Court and Civil Liberties

There has been a change in the role of the Supreme Court. While before 1937, most of its work was concerned with the protection of property rights as against the legislative and executive violations of due process, the emphasis in recent times has shifted to personal rights. If in 1921, a judge of the Supreme Court could assert, "that of the three fundamental principles which underlie Government, and for which Government exists, the protection of life, liberty and property, the chief of these is property," the emphasis today has shifted in favour of the other two. The Supreme Court has put emphasis on the personal liberties protected by the Bill of Rights. While the Bill of Rights contains limitations upon the Federal Government, the 14th and 15th amendments of the Constitution provide federal judicial State protection for the citizens against his State government. States are forbidden "to abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without the process of law; nor deny to any person within its jurisdiction the equal protection of the law." Nor could the right of the citizens of the United States to vote be denied or abridged on account of race, colour or previous condition of servitude. From the point of view of the average American citizen, the danger of abridgement of the civil rights arises largely on the level of State or local Government.

The reason why the Supreme Court has intervened in many cases involving State abridgement of civil liberties is that it has given up the old presumption that normally the actions of the Government are constitutional. Through the years, the Supreme Court has followed the rule that legislation which is challenged as to constitutionality must be presumed to be valid, unless its violation of the Constitution is proved beyond all reasonable doubt. "In the last decade, however, the court has announced a new doctrine that when a law appears to encroach upon a civil right



—in particular, freedom of speech, press, religion and assembly—the presumption is that the law is invalid, unless its advocate can show that the interference is justified because of the existence of a clear and present danger to the public security.” The test of *clear and present danger* was introduced by Mr. Justice Holmes. To quote him, “The question in every case is whether the words used are used in circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that (the legislature) has a right to prevent.” In 1945, the Supreme Court observed thus: “Any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, and appropriate time and place, must have clear support in public danger, actual or impending. Only gravest abuses, endangering paramount interests, give occasion for permissible limitation.”

The number of cases before the Supreme Court concerning civil liberties has increased in recent times. Since 1938, in more than a score of cases the Supreme Court has dealt with charges that States or cities have violated the religious liberty of the sect known as Jehovah's Witnesses. In the majority of these cases, the Supreme Court held that the action complained of was invalid. The question of religion and its place under the American Constitution has been discussed in a number of recent decisions given by the Supreme Court. According to a case decided in 1948, the constitutional clause against the establishment of religion by law was intended to erect a wall of separation between church and State. “Neither a State nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.” The Supreme Court held invalid the law under which religious instruction was given by the representatives of the different religions in State-operated school rooms during the regular hours. It was held that it was a utilisation of the established and tax-supported State school system to aid religious groups to spread their faith.

In 1952, it was held by the Supreme Court that expression by means of motion pictures is included within the free speech and free press guarantees of the Federal Constitution. Many decisions have been given by the Supreme Court which have the result of improving the status of the Negroes in the country. This is particularly so in the matter of the segregation of the Negroes from the Whites. Even if adequate but separate arrangements are made for the Negroes, these have been held to be unconstitutional by the Supreme Court. In the case of *Brown v. Board of Education*, Chief Justice Warren observed thus in 1954: “Does segregation of children in public school solely on the basis of race, even though the physical facilities and other tangible factors may be

equal, deprive the children of the minority group of equal educational opportunities? We believe that it does." The mere fact of segregation proves the fact of discrimination. "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone... We conclude that in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." The decision in *Brown v. Board of Education* is a great landmark. It will mean the end of legally enforced segregation in the United States.

With regard to the work of the Supreme Court in the field of Civil Rights, the Report of the President's Committee on Civil Rights observed thus in 1947: "It is not too much to say that during the last 10 years the disposition of cases of this kind has been as important as any work performed by the Court. As an agency of the Federal Government, it is now actively engaged in the broad effort to safeguard civil rights."

### Supreme Court and Constitution'

The Supreme Court of the U.S.A. has played a very important part in the development of the American Constitution. The Constitution which was actually framed in the 1780's was a small one and was intended to serve the needs of the people of the U.S.A. at that time.<sup>2</sup> The U.S.A. at that time was an agricultural country and its size was also small. The 13 States of the U.S.A. developed into 50 States. The population of the country also multiplied manifold. Instead of an agricultural country, the U.S.A. became a highly industrialised country. It must have been difficult to work the old Constitution under the new circumstances. However, the old Constitution has been able to serve the needs of the American people on account of the new meanings given to its words by the judges of the Supreme Court. The Supreme Court deserves a lot of credit for that achievement. To begin with, the Federal Government was very weak and the States were very strong. It cannot be denied that the powers of the Federal Government have been immensely increased by the

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1. Marshall C. J. made the following observations in the case of *Marbury v. Madison*: "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the Court must determine which of those conflicting rules govern the case. This is of the very essence of judicial duty. If, then, the Courts are to regard the constitution as superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply."

2. According to Justice Murphy, the Constitution fathers, fresh from a revolution, did not forge a political straight-jacket for the generations to come.



judicial pronouncements given by the Supreme Court from time to time.

It is to be observed that the Supreme Court has zealously protected the property rights of the middle classes. It has proved itself to be the citadel of wealth and not the bastion of popular liberties. It is pointed out that the Supreme Court has been an obstacle in the way of progressive legislation. It has invalidated income-tax, minimum wage, limited hours of work for industrial employees and upheld slavery. It is not for the people of the U.S.A. to say as to what law they want. It is for the Supreme Court to declare as to what law can be constitutionally passed. The five judges of the Supreme Court can declare unconstitutional any legislation which is unanimously considered to be useful and beneficial to society. To quote Chief Justice Hughes, "We are under a Constitution, but the Constitution is what the judges say it is."

According to F. J. Haskin, "This great tribunal (Supreme Court of America) is a balance-wheel in the governmental machine. It maintains its judicial poise while other departments of Government are swayed by fluctuating gusts of the popular opinion. Its duty, at all times and in all circumstances, is to uphold the Constitution as the supreme law of the land, and the exercise of this power is essential to the welfare of all the people." According to another writer, the Supreme Court has become "in many respects the most powerful factor in the American political system and the greatest judicial organisation in the world."

According to Prof. Laski, "In no country in the world today has the lawyer a standing remotely comparable with his place in American politics. The respect in which the federal courts and, above all, the Supreme Court are held is hardly surpassed by the influence they exert on the life of the United States. If it is excessive to say that American history could be written in terms of its federal decisions, it is not excessive to say that American history would be incomplete without a careful consideration of them."

De Tocqueville observed thus in 1848 about the Supreme Court: "If I were asked where I placed the American aristocracy, I should reply without hesitation that it occupies the judicial bench and bar. . . . Scarcely any political question arises in the United States that is not dissolved sooner or later into a judicial question." According to Frankfurter J., "The Supreme Court is the Constitution."

### Reform of Supreme Court

Many suggestions have been made for the reform of the Supreme Court of America. According to one suggestion, the Supreme Court should not be allowed to declare laws *ultra vires* by a simple majority of votes. At least 7 out of 9 judges of the Supreme Court must agree before a law can be declared *ultra vires*. Another suggestion is to abolish the power of judicial review altogether by amending the Constitution itself. Another suggestion is that the Con-

gress should be empowered to override a decision of the Supreme Court in the same way as it can override the veto of the President in the field of legislation. It is pointed out that the reforms which involve an amendment of the Constitution are not likely to succeed as it is not easy to amend the Constitution. The Supreme Court is likely to create trouble over any legislation which is intended to limit its power of judicial review. There is no popular enthusiasm in the U.S.A. to reform the Supreme Court on the lines mentioned above. The present position has been put in these words by Burns and Peltason: "Generally speaking, Americans have never been willing to put full trust in the majority. An independent judiciary with the power of judicial review has been the major institutional sign of this fear of unchecked legislative and popular majorities."

A reference may be made in this connection to the proposals of President Roosevelt in 1937 to reform the Supreme Court of America. When President Roosevelt came to power in 1933, the U.S.A. was faced with a very difficult situation. President Roosevelt embarked upon an ambitious programme of legislation known as New Deal legislation. A large number of laws were passed by the Congress to meet the situation. The interested parties challenged those laws before the Supreme Court and the latter declared 12 of them as *ultra vires* and invalid. President Roosevelt decided to hit back and put forward a proposal in 1937 with a view to overpower the opposition of the Supreme Court. According to his proposal, the President was to be empowered to appoint an additional judge for every member of the Supreme Court who had served for 10 years and who remained on the Bench after reaching the age of 70. However, the total membership of the Supreme Court was not to exceed 15 in any case. There was a lot of opposition to the new proposals and ultimately those were rejected. However, it is rightly pointed out that President Roosevelt "*lost his battle but won his war.*" The Congress allowed judges of the Supreme Court with 10 years of service to retire at the age of 70 with the full pay.

### SUGGESTED READINGS

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|--------------------------|---|---|
| <i>Alfrange</i>          | : | The Supreme Court and the National Will.  |
| <i>Brogan, D. W.</i>     | : | The American Political System, 1948.  |
| <i>Carr, B. K.</i>       | : | The Supreme Court and Judicial Review.  |
| <i>Corwin, E. S.</i>     | : | Court over Constitution: A Study of the Judicial Review as an Instrument of Popular Government, 1948. |
| <i>Eaines, C. G.</i>     | : | The Role of the Supreme Court in American Government and Politics.                                    |
| <i>Eaines, C. G.</i>     | : | The American Doctrine of Judicial Supremacy.  |
| <i>Harris, E. J.</i>     | : | The Judicial Power of the United States.  |
| <i>Hughes</i>            | : | The Supreme Court of the United States.   |
| <i>Mayers, Lewis</i>     | : | The American Legal System, 1955.  |
| <i>Mason, A. T.</i>      | : | The Supreme Court from Taft to Warren, 1958.  |
| <i>McGloskey, E. G.</i>  | : | The American Supreme Court, 1960.   |
| <i>Schwartz, Bernard</i> | : | The Supreme Court, 1947.  |
| <i>Warren, C.</i>        | : | The Supreme Court in United States History, Vols. I & II (1937).                                      |



## CHAPTER 14

### PARTY SYSTEM IN THE U.S.A.

Party system plays an important part in American politics. That is partly due to the fact that a very large number of elections have to be fought in the country. There are elections for the offices of the President and the Vice-President after every four years. There are elections for the House of Representatives after every two years. One-third of the members of the Senate are also elected after two years. The governors of the States are also elected for varying terms and in some cases the term is only two years. Elections have to be fought for State legislatures and local bodies also. Many officials such as judges of the State courts, public prosecutors, country officials, sheriffs, etc., have also to be elected. All this is impossible without a highly developed party system. It is the parties that choose the candidates for various elections and offices, do the propaganda and keep control over the members after their elections. Without party system, the American democratic system cannot be worked. Without guidance and help, it is too much to expect from the people themselves to accomplish everything successfully.

It is pointed out that the federal system of America makes a party system necessary. It is only through the parties which control both the federal government and the units that co-operation is possible between the two sets of authorities. Without the unifying force of the party, the federal government and the States may not work in harmony and work in a concerted manner. Moreover, the American political system is based on the principle of separation of powers. Unlike the English parliamentary system where the executive and the legislature work in harmony, the legislature and the executive in the U.S.A. are independent of each other. There is every possibility of non-co-operation between the President and the Congress. However, this is avoided by the party system which acts as a bridge between the executive and the legislature. It is rightly pointed out that the American political parties give to administration a single driving force, a common outlook and direction and the possibility of creative government.

#### Character of Party System

According to Dr. Finer, "*America has only one party, the Republican-cum-Democratic, divided into two nearly equal halves by habits, the contest for office, the Republican being one-half and the Democratic the other half of the party.*" According to D. S. Jordan, "There is no essential difference between the Republican and the Democratic parties as regards principles. They are like two hogs, one a large fellow with both feet in the trough, the other a lean, restless, brute doing his best to get an opening for himself.

The trough represents the ultimate consumer." The two American parties have been compared to "two rival State coaches spattering each other with mud, going along the same road to the same destination." According to Brogan, the American parties "are names which conceal all the range of potent American political opinion, and if one party were suddenly to be extinguished, there is no shade of opinion in it which could not be represented in the surviving party—weight of that opinion in the surviving party will not be greater or less than in the vanished congeries." Again, "The Radicals of the Republican Party are as docile as the Radicals of the Democrats, and the Conservatives as Conservative." According to Lord Bryce, "*The two great parties of the U.S.A. were like two empty bottles, each bearing a label denoting the kind of liquor it contains.*" However, Dr. Beard does not accept this view. According to him, such a statement over-simplifies the true state of affairs. That implies that the two parties are "substantially identical in their aspirations, intentions and desires," and the voters are reduced "to phantoms voting for empty words." According to Ogg and Ray, "Today both of the leading parties are notoriously conglomerate and disunited. Even yet, they are not properly to be written off as merely two bottles carefully labelled but empty, as James Bryce asserted of the parties of some forty years ago. By and large, they still stand for some distinctive things, traditions, attitudes, principles and policies. Cutting through all strata of society, penetrating all geographical sections, enlisting in some degree all economic interests, they, however, must increasingly be all things to all men in order to hold, or the hope to gain, power."

According to Hyman, "The idea of a 'pure' conservative party and a 'pure' liberal party in America, then, has the same air of unreality as a plan to have a mountain range without valleys or a river without banks. Of themselves, mountains imply valleys as rivers imply banks. And the same is true of our party life. So long as we don't want a welter of one-interest or ideological parties, by the very nature of our diversity each party will and must have a mixed character. In particular must this be true under our Federal arrangement where the legislative impulse is designed to come from below, and not from above as in England."

According to Griffith, "It is a temptation in the United States to say that there is no real difference between the Democrats and the Republicans." The element of truth in this lies in the fact that exponents of almost all respectable points of view on any issue can in fact be found within the ranks of both parties. However, he points out that there have been differences between the parties from the very beginning. The party led by Hamilton was aristocratic and stood for centralization. The party led by Jefferson was democratic and believed in decentralization. In the time of Abraham Lincoln, the Republican party was democratic and the Democratic party was reactionary and stood for the rights of the slave-owners. Up to 1930, the Republican party got credit for national prosperity and liberal outlook. However, since 1932, the character



of the Democratic party has been changed under Roosevelt and Truman. The Democratic party was able to win over the votes of all the progressive elements in the country. Under President Eisenhower, the Republican party also tried to regain its own strength.

As regards the nation-wide issues that really divide the two parties in the U.S.A., Griffith remarks thus: "For years a protective traffic filled this role; but there are now strong protectionist elements among the Democrats and Republicans have attracted a strong following along the Eastern sea-board whose prosperity is associated with an expanding foreign trade. Agriculture knows no party lines; neither does international co-operation; nor public power; nor antimonopoly; nor even organised labour; nor universal military training; nor social security; nor public housing. These controversial issues and the majority sentiments of the two parties may frequently be found on opposite side—always there is a substantial minority of each opposing not so much the other party as its own leadership on the particular issues."

According to Sidney Hyman, the Democrats and Republicans "differ on measures that can (1) put more people to work; (2) create a climate that will spur private employers to produce more; (3) give to all hands a fair share of what is produced when the system fails to do that; (4) police that part of the productive plant in which the public has an interest as distinct from the rights of ownership of management; (5) conserve the nation's resources for the future while meeting the industrial needs of the present; and (6) distribute fairly the human and material costs of national efforts like defence programmes which serve the rich and poor alike.

"In foreign affairs, the lines between the two parties are generally drawn in terms of high tariff, against low tariff, isolationism against internationalism, a sentimental pacifism against militarism; and a preoccupation with the problems of Europe as against Asia or the other way around. Yet it is difficult to assign to either party a hard and fast ideological position on any of these topics. The party attitude toward a tariff, to illustrate, is bound up with all the internal divisions in our domestic economy. It is not a high or low tariff as such which becomes the decisive issue but more often the specific item in a tariff schedule."

Each of two parties in America is involved in acute internal rivalries. Each has the "faction of memory" which wants to reconstruct the former era when it gained a major share of the rewards American society has to give. Each has a "limitists faction" which recalls the former era as a time of hardship that has to be overcome before the goods of the present were won. But it fears that any further social change will imperil what is in hand. It would, therefore, commit everyone to the support of the prevailing balance of forces. And lastly, each party has a "faction of hope". It recalls the past as a period of denial. But its maximum demands have not been fulfilled in the present. It asks for a new turn of the roulette wheel on a chance that it will gain what it wants.

Both the Republican and Democratic parties are averse to extremes. They bring into the blood-stream of public action only what has already been filtered through the screen of popular agreement. It is the outcome of constitutional wisdom. What is sought for in political action is justice for society as a whole and not for a part of it. The Americans are not ruled by some airy fairy device that thistles for wheels and dew-drops for oil. They are ruled by two major political parties who between them indirectly control the law-making organs. They can make, break or change those organs and through them the nation.

The Democratic Party platform in 1940 in respect of foreign policy was as follows: "The American people are determined that the war raging in Europe, Asia and Africa shall not come to America. We will not participate in foreign wars nor send the Army, the Navy and the Air Force to fight outside the Americas except in case of attack. We must be so strong that no possible combination of Powers would dare attack us. We proposed to provide America with an invincible air force and navy strong enough to defend our coasts and national interests and a fully equipped mechanised army together with the necessary expansion of industrial production. We have seen the downfall of nations accomplished through internal dissension provoked from without. We denounce and will do all in our power to destroy the treasonable activities of disguised anti-democratic and un-American agencies. In self-defence and good conscience, the world's greatest democracy cannot afford heartlessly or in a spirit of appeasement to ignore peace-loving and liberty-loving people wantonly attacked by ruthless aggressors. We pledge ourselves to extend to these peoples all the material aid at our command, consistent with law and not inconsistent with the interests of our national self-defence—all to the end that peace and international good faith may yet emerge triumphant." The Republican programme also does not differ much from the Democratic programme. It is a little more emphatic in opposing "American involvements in foreign wars" and in condemning "executive activities that might lead to war, without approval of the Congress". It also "favours aid compatible with international law to nations fighting for liberty."

The two parties differ a little more in matters of internal policy although there is a large measure of agreement. In order to provide social security, the Democrats promise the steady expansion of the Social Security Act to cover groups not now protected and favour larger and more uniform benefits in all categories and a minimum pension for those unemployed who reach the age of retirement. The Republicans want the "necessary" old-age benefits and the extension of unemployment insurance to groups not now covered "wherever practicable". The Democrats defend the right of labour to bargain collectively. The Republican Party has also always protected the American workers and supported the right of labour to organise and bargain collectively. The Democrats favour of greater state interference with business and greater



State responsibility to provide work for the needy jobless. The Republicans favour more freedom for business "while promising enforcement of the anti-trust law." Their view is that the encouragement of free enterprise and the removal of administrative restrictions on business will automatically lead to the absorption of the jobless by private industry.

Both parties are agreed on strengthening the system of collective security through the United Nations, on supporting and if necessary giving economic aid to freedom loving peoples so that they may be able to resist Communist aggression, on economic and political co-operation with the countries of Western hemisphere, etc., in domestic policy, both the parties are agreed on the need to check the rising price levels, to enact a national health programme, to support old-age and unemployment insurance, to preserve and reclaim land and to provide reasonable security to the farmers and to secure equal rights for women with men. The one great difference is that the Republican Party lays more emphasis on the reduction of tax and the Democratic Party also emphasises the strengthening of anti-trust laws and the right of labour to collect bargaining.

In international politics, the democrats play "the strange role of the party of nationalism, strong armies and navies, international intervention and war, leaving to the Republicans—at any rate for the time being—the less glamorous and rather unfamiliar role of advocating caution, restraint, even isolationism."

In India, the parties may be based on religion. In England, those may be due to temperamental and political differences. However, the American parties have an economic basis. To quote Beard, the American parties are "founded upon permanent sectional interests, above all upon those of an economic character." The four main sectional interests are the manufacturing section, the financial section, the labouring class and the agricultural class.

Another thing to be noticed regarding the character of the American parties is their non-doctrinal nature. According to Beard, "The personalities and issues of parties rather than the principles and forms of government, constitute the staple of American politics." People vote for a particular party because they have been accustomed to do so or their parents have been doing so or because they are situated in a particular locality or region.

According to Dr. Finer, American parties are without ideals or spine. They "straddle" in their policies. Neither party has yet come to depend for its support on a distinctive gathering of interests. Both appeal to all sections of a land of enormous territorial range, geographic diversity, economic interests, and racial and cultural groupings. Both are impelled to stake their support not somewhere but everywhere. The exception is that the Democratic party has the monopoly in the South and the Republican party is well-favoured in New England. Declarations of policy may be made by parties but they need not be taken seriously. Even the majority

party in the Congress is not sure of passing the required legislation. The Supreme Court may declare the law to be *ultra vires* and that is bound to weaken the authority and sense of responsibility of the party. The vast size of the country results in localism. Extraordinary efforts are required to overcome distances, density of population and the various kinds of urban and rural patches. The interests of the people, their everyday thoughts and pursuits are largely focused upon and engaged by the life of their neighbourhood. Localism is reinforced by elections, legislative authority and office and graft on the spot. The constitutional separation of powers and diverse terms of office break up the vision of unified purpose. Any vote cast at any election is not a vote which carries total mandate. There is less of party fever in the U.S.A. Its people are materially acquisitive in a specially high degree. The electorate is of a middle-class bourgeoisie type. They are not inspired by the heated winds of philosophic doctrine or ideology. They are moderate and good-tempered. They do not take sides and if the electorate does not take sides, there cannot be any sides. American parties cannot have much gristle though they may be fat.

### History of Political Parties

It is true that the "Founding Fathers" of the American Constitution considered the political parties to be undesirable, but the parties made their appearance in American politics from the very beginning. The Federalists under Hamilton belonged to the aristocratic class and stood for a strong central government. They became strong because they were supported by President Washington. On the other hand, the Democrats were led by Jefferson. They

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1. According to Washington, "However combinations and associations of the above description (political parties) may now and then answer public ends; they are likely, in the course of time and things, to become potent engines by which cunning, ambitious and unprincipled man will be enabled to subvert the power of the people and to usurp for themselves the reins of government." Again, "I have already intimated to you the danger of parties in the State, with particular reference to the founding of them on geographic discriminations. Let me now take more comprehensive view, and warn you in the more solemn manner against the baneful effects of the spirit of party generally. It serves always to distract the public councils and enfeebles the public administration. It agitates the community with ill-founded jealousies and false alarm; kindles the animosity of one part against other; foment occasional riot and insurrection. There is an opinion that parties in free countries are useful checks upon the administration of the government, and serve to keep alive the spirit of liberty. This within certain limit is probably true—and in governments of a monarchical cast patriotism may look with indulgence, if not with favour, upon the spirit of party. But in those of the popular character, in government purely elective, it is a spirit not to be encouraged, a fire not to be quenched. It demands a uniform vigilance to prevent its bursting into a flame, lest, instead of warming, it should consume." Madison referred to the "violence of faction" (parties) in these words: "Among the numerous advantages promised by a well-constructed union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. By a faction I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."



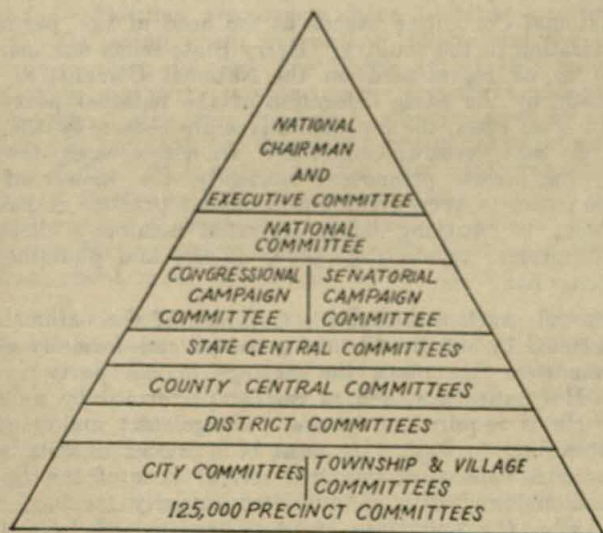
stood for state-right and state-sovereignty. They preached the principles of liberty, equality and fraternity. The Republicans remained in power from 1800 to 1824. Then there was chaos in party politics. The Democrats were in power from 1828 to 1840. The supremacy of the Democratic party was ended when the question of slavery put the entire party system in the melting pot. If the Southern States had shown moderation, the Democrats might have continued in power, but the Republicans under Lincoln took advantage of the slavery question.

Lincoln was elected President and the abolition of slavery brought great credit to the Republican party. Once put in power, the Republicans consolidated their position by forming a solid combination of the East and West, of the great industrialists of the Eastern States and the farmers of the West, the former by high tariffs and the latter by free grants of land. The Republicans strengthened their position by means of federal patronage and contracts for road-rail construction. During the period of Republican ascendancy, the Democratic Party sank to its lowest depth.

From 1885 to 1889, 1893 to 1899, 1913 to 1921 and 1933 to 1952, the Democrats were in power. In 1952, the Republicans under Eisenhower came to power.

### Permanent Party Organization

The permanent party organization of the two main parties is practically the same, the same can be described by the diagram given below. However, the periodic organization consists of party primaries and conventions which meet annually or less frequently.



The precinct or the polling district is the basic unit of permanent party organization in the U.S.A. and its size depends upon population density and number of voters which can be conveniently handled by the election officers. The average number varies from 100 to 500. There are about 125,000 precinct committees and units in the U.S.A. It is the duty of the Chairman of the party precinct to put himself in touch with the voters in the locality and do all that he possibly can for them to win their favour.

Above the precinct committee is the ward committee in an urban area. From a ward, city councillors are elected. It is mainly concerned with the politics of the municipality. A city committee supervises the work of the ward committees and the precinct committees. Village committees or township committees are set up in rural areas to look after the local problem.

The county central committees co-ordinate the work of all lesser bodies. They deal with all matters affecting the county government and state central committees. There are more than 3,000 county central committees. There are also district committees. The position of the district committees varies from State to State and from urban to rural areas.

The state central committees supervise the working of the party machine within the State. They organize the party campaigns for state offices, for senators to the Congress and State efforts for the national party tickets. The members of the state central committees are chosen in different ways. Some of them are elected and some are nominated. The number of members of the State central committee varies. Occasionally, the chairman of a state central committee is an important political figure, but ordinarily he is a tool in the hands of a stronger man or group in the background.

The National Committee stands at the head of the permanent party organization in the country. Every State sends one man and one woman to be represented on the National Committee. The choice is made by the State delegation of the national party convention. In some cases, the representatives are chosen by the State convention or State central committee. In a few cases, they are elected by the direct primaries. Normally, the power of the national committee is very great but in actual practice it has confined its work to ratifying the presidential nominee's choice for National Chairman, to electing other officers and planning the national convention.

The general practice is that the chairman of the national committee is selected by the presidential nominee and formally elected by the committee. He plans the strategy of his party in the campaign. His duties are such as can be performed by a super-politician. He is required to possess courage, tact and boundless energy. According to Ray, "He must be a master of details, and at the same time capable of taking a correct view of the general situation and endowed with an unlimited capacity for hard work. He must possess the confidence of party leaders and have an al-



most intuitive grasp of the popular feeling. He must keep in touch with every fibre of the organization holding frequent conferences with the State chairman in the most important and doubtful States. He must be conciliatory, secretive yet approachable, keen in his choice of helpers, able to command the services of the most effective workers in the party, and capable of making them work in unison without overlapping." The chairman must select the weak part in the fortification of the opposite party and strengthen his own weak parts. It is he who decides as to how the party funds are to be utilized in the elections. In the case of victory of his party, the chairman is usually given an influential voice in the distribution of patronage. He must see to it that those who have helped the party are rewarded adequately.

The secretary and treasurer of the national party are also important officers. It is their duty to attend to correspondence and organize the whole of propaganda machinery. Every national committee has a large number of sub-committees or auxiliary committees, e.g., executive committee, finance committee, publicity committee, organization committee, etc.

The work of the national committee is restricted to presidential election. Another committee known as the congressional campaign committee is given the duty of helping the party candidates for the House of Representatives. The idea of the campaign committee originated with the Republicans in 1866. The campaign committees function mainly during the election campaigns. No stone is left unturned to ensure the success of the party candidates.

As regards the finances of the parties, millions of dollars are spent by every party on the occasion of elections. Money is required for radio time, newspapers space, literature-printing, etc. In 1936, the Democrats spent five million dollars and the Republicans about nine million dollars. The Hatch Act of 1939 as amended in 1940 forbids any party to spend more than three million dollars in one campaign. However, this law has been evaded by showing expenditure as incurred by the State party organization or other auxiliary bodies. It is calculated that the total expenditure by the Republican Party in 1940 was about fifteen million dollars and by the Democratic Party about six million dollars. In 1944, the Republican Party spent more than thirteen million dollars and the democrats about seven and a half million dollars.

All this money comes from different sources. Some money is contributed by those who are genuinely interested in the programme of the party. Some donations are given by those who expect something in return. Sometimes money has been got through high-priced dinners, book sales and trade union contributions. The Public Utility Holding Company Act, 1935, forbids contributions for political campaign by corporations. As corporations are forbidden by law to make contributions to the party-funds, what is actually done is that contributions are made by the officers of those companies and they are compensated through bonuses or expense accounts. A lot of money is contributed by the office-holders of

the party. Sometimes wealthy candidates give a lot of money to the party and they are known as "fat cats".

According to Potter, "It is not considered corrupt to contribute money in return for favourable policies in America any more than in Great Britain. Thus it is considered corrupt to contribute to a party that refuses to pass an effective law in the first place. There is obviously a good deal of scope in America as in Britain, especially in the business party, for raising money without resort to 'corruption'. The traditions of generations are not, of course, easily overcome; it is difficult, for example, to keep individual office-holders from supplementing their pay in the usual ways. Governor Dewey of New York sought to keep his machine 'clean' but found it a hard job. In 1953 he had to force the Republican majority leaders in the State Senate to resign when it transpired that the latter had visited a convicted labour racketeer in gaol, and in 1953-54 he had to deal generally with the corrupt practices of leading Republican politicians in connection with harness racing in the State. Still, the cautious policy may prevail if, on the whole, it pays political dividends."

It is to be observed that parties are often controlled by a single autocrat or a group. A boss is a political leader who maintains power through corruption, spoils and patronage. The individual or the group rules through the party-machine. Political machines and bosses have maintained their position through bribery, patronage, special favour and rigid party elections.

### Periodic Organization

It has already been pointed out that the periodic organization of the political parties consists of primaries and conventions which meet annually or less frequently and decide important questions regarding the party. To begin with, candidates for various elective offices in the American States were chosen by the caucuses of the party leader. Later on, they were selected by the legislative caucuses of every party. A caucus is an unofficial secret meeting of the party leaders for the selection of candidates. As there was a lot of corruption and wire-pulling in the selection of the candidates made by the party caucuses, the system was given up and was replaced by the convention system. A convention was a meeting of the delegates of the party and the selection of the candidates made by the convention was binding on the party members. High hopes were entertained but the old evils could not be removed as the conventions also were dominated by the bosses. It was felt that honest citizens had no chance to be nominated for election. The result was that the convention system was abolished and the system of direct primaries was substituted in most of the States.

Under the system of direct primaries, candidates for the various elective offices are nominated directly by the voters. There are three kinds of primaries, *viz.*, open, closed and non-partisan. Under the open direct primary system, every voter is given ballots of all the parties and he can vote according to his opinion. The closed



direct primary is open only to the members of the parties. Under the non-partisan system, the ballots given to the voters do not indicate the party affiliations of the various candidates.

The working of direct primaries also shows that the system has not worked satisfactorily. The direct primaries have also been controlled by the party bosses who get themselves and their friends nominated. Fraud, intimidation and force are employed by the bosses and the rings to get things done in their own way. No wonder the better type of citizens absent themselves from the direct primaries.

Politicians generally do not like the direct primary. It is contended that the direct primary had done much to undermine party loyalty and destroy party organisation and unity. A man may circulate a petition, get his name on the ballot and be nominated, without being in harmony with other candidates of the party. This probably could not happen under the caucus or convention system. The direct primary is expensive and the expense is borne by the public treasury and not by the political parties concerned. The voters are already over-burdened with elections and the freedom of direct primary makes it necessary for the candidates to undertake another campaign in addition to the regular campaign. The system favours the urban areas where distances to the polls are short and voting is comparatively easy. In the case of the rural areas, voting is inconvenient on account of the long distances involved and the time required to go to the polls. It is not denied that there are certain evils in the existing system but it is maintained that those are more than offset by the great advantage of giving to the people a direct control over the nominating procedure instead of leaving it into the hands of the professional politicians and political bosses. Until a better system is devised, the direct primary appears to be the best at present.

### Various Parties

In addition to the Democratic and Republican parties, there are other smaller parties in the U.S.A. The Prohibition party held its first convention in 1872. It is opposed to the manufacture, import and sale of intoxicating liquors. Up to 1920, its object was to agitate for prohibition and when that was done, it tried its best to see that the same was enforced. However, when prohibition was abolished in 1933, the party went into the background but it is trying again to gather support for its objective.

To begin with, there were the Socialist Labour Party and the Socialist Democratic Party. Later on, both of them were merged into the Socialist Party of the U.S.A. Its programme includes the public ownership of rail-roads, telegraphs and telephones, extension of State ownership to mines, forests and other natural resources, socialisation of industry, work for the unemployed, expansion of social security benefits, adoption of initiative and referendum all over the country, abolition of the American Senate, etc.

There is also the Communist Party of America. It is a well-organised party and it puts its candidates for the various offices. It is pointed out that its actual strength is much greater than is publicly known. There is a lot of anti-communist feeling in the U.S.A. and consequently the chances for the Communist party are not bright.

Reference may be made to the various labour groups in the U.S.A. Those are the American Federation of Labour, the Congress of Industrial Organizations and the Rail-Road Brotherhoods. These groups have a large membership and their leaders command a lot of political influence.

The two-party system works well in the U.S.A. and there is not much scope for other parties to get any big following. According to Prof. Munro, "When the two-party system is functioning properly, there is no room for a third party or a fourth party—much less for a dozen of them, such as existed in the European democracies before their surrender to dictatorship. Multiple parties are usually the result of injecting some highly emotionalized religious, social, or sectional issue into politics. As a rule they are short-lived, single issue organizations. They demand something for a group that feels itself ill-treated or ignored by the major parties. Under a properly organised party system, things which any large number of voters really want will be seized upon by one of the two regular organizations and incorporated into its own programme long before they can be sued as the endowment of a new party. And even though a third party may get hold of a good issue, it must have leaders, machinery and funds in order to make itself a power in national politics. Third parties flash into the political firmament from time to time, and shine brilliantly for the moment; but their life expectancy is usually short."

### SUGGESTED READINGS

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|--------------------------|---|
| <i>Beard, C. A.</i>      | : American Government and Politics, 1947.   |
| <i>Bone, H. H.</i>       | : American Politics and Party System, 1949. |
| <i>Brogan, D. W.</i>     | : The American Political System, 1948.      |
| <i>Holcombe</i>          | : The New Party Politics.                   |
| <i>Tourtellot, A. B.</i> | : The Anatomy of American Politics, 1950.   |
| <i>Zink, H.</i>          | : A Survey of American Government, 1950.    |



## CHAPTER 15

### STATE GOVERNMENT AND ADMINISTRATION

The importance of the States in the American policy cannot be over-emphasized. According to Prof. Munro, "The States are still the pivot around which the whole American political system revolves. Were it not for the States, the national government could not function; a President could not be elected, nor could Congressmen be chosen; for it is the States that arrange the congressional districts, prepare the voters' lists, and provide the machinery of elections. In them, too, is to be found the organized party life of the nation, so important in actual conduct of our electoral institutions—national parties being little more than instruments for co-ordinating the individual State units of the same partisan allegiance for nation-wide electoral campaigns." Again, "Without the action of the State legislatures (either by ratifying or initiating proposals), no formal amendment could be added to the federal Constitution. Likewise, if the States did not exist, there could be no country, city, or town governments; for all of these derive their authority, and even their legal existence, from State Constitution and State laws."

When the American Constitution was enforced in 1789, the number of the States in the U.S.A. was 13, but now that number has risen to 50. The States differ from one another in the matter of the extent of their territories, population, geographical factors, economic factors, etc. All the States have their separate Constitutions, and those Constitutions do not form a part of the Federal Constitution which came into force in 1789. According to Lord Bryce, "The State Constitutions are the oldest things in the political history of America, for they are the continuations and representatives of the Royal Colonial Charters whereby the earliest English Settlements in America were created and under which their several local governments were established, subject to the authority of the English Crown and ultimately of the British Parliament." The principles of most of the Constitutions are the same. To quote Bryce again, "They are copies, some immediate, some mediate, of ancient English institutions, viz., chartered self-governing corporations which under the influence of English habits, and with the precedent of the English parliamentary system before their eyes, developed into Governments resembling that of the English in the 18th century." In all the State Constitutions, the principle of the separation of powers is to be found. Every Constitution is stated to be derived from the people. There is provision for the election of governors, judges and members of the legislatures. There is also provision for referendum, initiative and recall. There is also provision for countries, cities, townships, villages, schools and districts.

All States are entitled to certain guarantees at the hands of the National Government. The Constitution provides that "the Unit-

ed States shall guarantee to every State in the Union a Republican form of Government." Every State is to be protected against foreign invasion. If there is violence within the State, the Federal Government is to help on the request of the legislature or the executive of the State concerned.

### Division of Powers

As regards the distribution of powers between the Federal Government and States, both of them possess limited powers. The powers given to the Federal Government are enumerated in the Constitution. It is true that the powers of the States are original and inherent, but there are many limitations on them. They do not possess the powers which are delegated by the Constitution to the Federal Government. "No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; in order to deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The States are prohibited from negotiating treaties, waging war, impairing the obligations of contract, etc. The Federal Government guarantees to each State a republican form of government and no State can change its republican form even by following the prescribed method of amendment laid down by law. States cannot impose export and import duty. They cannot tax federal instrumentalities. They cannot coin money or issue paper currency. They cannot pass bill of attainder or *ex post facto* laws. Although the States cannot deprive any person of his property yet they can regulate property or interfere with it under the clause of "police power" vested in the State. The police power of the State has been interpreted by the judges according to their own temperaments. Judges like Marshall tried to increase the powers of the Federal Government and judges like Taney stood for the rights of the States.

Certain obligations have been imposed upon the States. Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. If a decree has been passed by a court of law in one State, the same can be executed in another State and it is the duty of another State to see that the same is given effect to. It is also provided that no State shall discriminate in favour of its own citizens against persons coming into that State from other States. It is also the duty of every State to capture the criminal running away from justice and hand him over to the State where he is required for trial.

### State Executive

The State executive consists of a Governor, a Lieutenant-Governor, a Secretary of State, an Attorney-General, an Auditor, a Treasurer, a Superintendent, etc. In some States, the Governor is elected for two years and in some others for four years. Up to 1947 the Governor of New Jersey was elected for three years but in 1947 the term was extended to four years. Provision has been made for



the impeachment of the Governor by the House of Representatives before the Senate of the State. A two-thirds majority is required for a successful impeachment. In some States, provision has been made for the recall of a Governor. However, only one Governor, named L. J. Frazier of North Dakota, was recalled in 1921.

When a Governor is convicted by impeachment, or dies in office or otherwise resigns, he is succeeded by the Lieutenant-Governor in most of the States. A Lieutenant-Governor is ordinarily chosen for the same term and by the same process as the Governor and in ordinary circumstances, his duty is to preside over the meetings of the Senate. If there is no Lieutenant-Governor in a State, the Secretary of State succeeds the Governor. If a Governor is recalled by the people, his successor is chosen by the people either at the time of recall or at a special election afterwards.

The Governor of an American State possesses a large number of powers and he is not a constitutional head. The principal executive powers of the Governor are appointments and removal, the general supervision of State administration, financial functions, military functions, duties in relation to the Federal Government and the other States, the grant of pardon and many other miscellaneous matters. As regards the appointing power, it is steadily increasing. Many State Constitutions provide that the Governor shall appoint certain specified officers and "all others whose appointments on election are not otherwise provided for." However, the appointments made by the Governor have to be confirmed by the Senate of the State. Governors also have the power to remove State officials after following the necessary procedure with regard to charge-sheet, explanation, hearing, etc. It is also the duty of the Governor to supervise the enforcement of the laws and conduct all the affairs of the State. This depends upon the character and personality of the Governor. His prestige and authority as a party leader can also help him in this matter.

As regards the financial powers of the Governor, it is his duty to prepare the annual budget and send the same to the legislature. As regards his military powers, they are not so many as they used to be. However, nominally the Governor is the Commander-in-Chief of state militia and the State-guard. The powers of the Governor as Commander-in-Chief are actually exercised by an Adjutant-General or some other officer. The Governor can appoint the officers of the militia. He can call out the militia to put down any riot or civil disorder.

The Governor has to perform certain duties towards the Federal Government. He is the recognised medium of communications between the State and the Federal Government. All orders of the Federal Government are communicated to the State through the Governor. All proposals for the amendment of the Federal Constitution are sent by the Congress to the Governor. Whenever the Federal Government wants help or co-operation from a State, it writes to the Governor of the State.

The Governor has the power to pardon or reprieve the offenders

who have been convicted by the courts of law within his State. These pardons may be absolute or conditional.

The Governor can issue an order for a special election to the State legislature. He is an ex-officio member of the various State boards and commissions. It is his privilege to welcome the distinguished visitors to his State. He reviews parades. He holds conferences with the party leaders.

Although the States' Constitutions are based upon the principle of separation of powers, Governors of the States exercise a lot of influence on legislation. A Governor can call a special session of the legislature and direct the same to discuss certain measures proposed by him. On account of his influence, the Governor can initiate legislation and push the same through both the houses of State legislature. At all times, he has a hand in law-making. According to President Theodore Roosevelt, "More than half of my work as Governor was in the direction of getting needed and important legislation." The Governor can use his influence as a party leader to get the desired legislation through the legislature. He can put pressure on the senators and members of the House of Representatives to help him in his legislative programme. As they are interested in getting jobs and the Governor has the power to distribute loaves and fishes, he can easily get the support of the legislature.

The Governor can appeal to the public for help against the obstinacy of the members of the legislature. He can put his case before the people in a much better way than anybody else in the state can do.

The Governor has the power to veto any bill passed by the State legislature, or ask the latter to reconsider the same. He also possesses the power to veto a part of a bill passed by the legislature. It is pointed out that the power of partial veto is a very useful one and the Governor can cut off the items which he does not approve of. However, its demerit is that it enables a Governor to put undue pressure on the members of legislature who are interested in passing the budget. The veto power has been used more frequently in the States than in the Federal Government. Moreover, a Governor uses his veto power more frequently when there is a hostile legislature. Sometimes, the members of a State legislature include in the budget certain items which they know that the Governor is going to veto and thereby can bring a bad name for the Governor. To quote one state Senator, "I never vote in favour of a tax or against an appropriation. I let the Governor balance the budget and take the rap. That's what he's paid for."

Governors also have the power of issuing ordinances to provide the details in the laws passed by the State legislatures.

It is clear from above that the office of the State Governor is not a sinecure one. "It demands sound judgment, a steady head and unremitting industry. He who holds the post is much in the public eye and continually under the fire of criticism from his politi-



cal opponents. A Governor is not only expected to do the work of three or four men, but he is counted upon to achieve results which owing to the division of authority between himself and the legislature, are not always within his power to secure."

### State Legislature

Excepting the State of Nebraska which decided in 1934 to have a unicameral system, the other States in the U.S.A. have a bicameral system. The two houses are known as the Senate and House of Representatives. Both of them are elected by the people. In order to avoid the charge of duplication, the constituencies for the Senate and the House of Representatives are arranged differently. In the case of the Senate, its members are elected by the counties and every county, irrespective of its population, has equal representation. On the other hand, the House of Representatives is elected on a population basis. The strength of the House of Representatives is greater than that of the Senate. However, the House of Representatives is a more popular house than the Senate. Like the American Senate, the State Senates also have a longer term than the House of Representatives. However, a part of the members of a State Senate retire after fixed intervals. Even the age-qualifications for the Senators are higher than those for the members of the House of Representatives. In most of the States, there are two sessions of a State legislature, but in a few States there is only one session in a year. Members of the legislature enjoy the usual privileges. Any bill can originate in either House, but a money bill must originate in the House of Representatives. However, the Senate has a right to make changes in the money bill. If a bill is passed by both the Houses, it is sent to the Governor for his signatures. If a bill is passed by one House and rejected by the other, the bill fails. However, even if a bill has been passed by both the Houses and is sent to the Governor, the latter can return the bill with his objections. But if the same bill is passed by both the Houses by a prescribed majority, it becomes law in spite of the objections of the Governor. The prescribed majority varies from State to State.

The powers of the State legislature are not defined. Whatever powers have not been given to the Federal Government and whatever has not been specially forbidden to the State legislatures, are enjoyed by the State legislatures. It is clear that the State legislatures exercise all the residuary powers. There was a time when the states insisted too much on their autonomy, but on account of the change of circumstances, there is a growing tendency towards the increase of the powers of the Federal Government. The result is that the States are becoming more and more dependent on the grants of the Federal Government and thereby losing a lot of their independence. No wonder, the State legislatures are losing their old activity and vigour.

It is pointed out that the legislation in the States is not of a high standard. That is due to many causes. The legislators are required to perform those functions which are performed by the ad-



ministrative officials in the other countries by means of administrative regulations or Orders-in-Council. The U.S.A. is a land of mass production in every field and the same is true of laws. Every State is required to pass a very large number of laws, and sometimes the average is four to five laws a day. On account of the rush and lack of time for consideration, legislation is bound to be of inferior quality. There is also a lack of legislative planning. Very little time is spent for preparation before the meeting of the legislatures. The result is that the bills are drafted in a hurry and passed in a hurry. Full advantage is not taken of the use of committees. Attempts are being made to improve the state of affairs.

### **Amendment of State Constitution**

Every State has its own separate Constitution and the method of amendment varies from State to State. The amendment has to be passed first of all by the State legislature and then referred to the people for approval. The majority required for the passing of a constitutional amendment in the State legislature varies. Referendum is obligatory for a constitutional amendment. No State Constitution can be amended in such a way as to conflict with the national Constitution.

### **State Judiciary**

Every State has its own set-up of courts to try cases. There is no link between the courts set up by the State authorities and the federal courts set up by the Federal Government. Every State has an hierarchy of courts whose powers and functions differ. Most of the States have three grades of courts and some of them have even more. The lowest courts are those of the Justices of the Peace which have the authority to try petty civil and criminal cases. County or Municipal Courts possess both original and appellate powers. They hear appeals from the decision of the justice of the Peace and also try themselves cases of a serious nature or involving higher amounts. There are superior courts which hear appeals from the decisions of the County Courts. They also possess original jurisdiction in cases involving higher amounts. Every State has a Supreme Court of its own which hears appeals in all cases. The Supreme Court is the highest court and no appeal lies against its decision to the Supreme Court of America. It is to be observed that the judges are elected in many States by the people. It is only in 10 States that the judges are not elected. The judicial procedure varies from State to State and there is no uniformity about it. Provision is made for the removal of judges by means of impeachment. In some States, judges can be recalled. It is hardly a satisfactory state of affairs. There is a possibility of corruption and the exercise in influence on the judges. It is difficult to expect justice from a judge who is always thinking of his next election. There is much to be said for the nomination of the judges instead of their elections.



## Local Government

In every State, there is a large number of local bodies which do a lot of work in their own spheres. All the local bodies derive their powers from the State governments. They have their own officials to carry out their duties. The townships, the counties, the towns, the cities and the school districts are the local units in the States. Many experiments have been made in the U.S.A. in the field of local government and the most important are the commission plan and the city manager plan.

## Direct Democracy

It is to be observed that direct legislation and recall are to be found only in the States and not at the centre. The system of initiative and referendum prevails in most of States, but that of recall only in a few States. The necessity of the direct legislation has arisen on account of the fact that the people do not have faith in the honesty and integrity of the State legislatures. It is felt that the members of the legislatures are either bribed or influenced in an undesirable manner. The result is that even those bills are passed which are hardly in the interests of the people. Moreover, a State legislature may not pass a law which the people want very badly.

As regards initiative, law requires the collection of the signatures of 5% to 10% of the qualified voters. In the case of a constitutional amendment, the percentage of signatures varied from 8% to 15%. The task of obtaining the signatures is not a simple one and requires the services of both professional and volunteer canvassers. When the required number of signatures have been collected, the petition or bill is submitted to a State official appointed for the purpose. When this has been done, the measure is put upon the ballot at the next regular State election or at a special election. It is not necessary that only one measure will be put on a ballot at a time. Sometimes two conflicting proposals appear on the ballot and both of them are approved by the voters. In that case, the proposal having a greater support becomes effective. With a view to give information to the voters, pamphlets are published by the States and distributed among the registered voters before the polling. These pamphlets give the information both in support and against the proposal. A lot of money is spent on those pamphlets and it is not always necessary that the voters either read them or even understand them. No measure referred to the people or adopted by them can be vetoed by the Governor. Even if a proposal is rejected by the people it can be brought forward next year by means of another petition. There is a provision in some States that if a proposal is rejected by the people, it cannot be brought forward again for a period of at least three years.

The same procedure is followed in the case of referendum in so far as the collection of signatures is concerned regarding those measures which the legislature refuses to submit to the people. In

such cases, what is demanded is that a particular measure must be referred to the people before the same is enforced.

Ordinarily, a measure passed by a State legislature is not enforced for a certain period so that the people may get an opportunity to file petitions against it. However, in the case of emergency legislation or "measures immediately necessary for the preservation of the public peace, health and safety", provision is made for their immediate enforcement. To safeguard against abuses, it is required that all emergency legislation must be passed by a two-thirds majority.

Referendum may take any of the three forms. The State legislature may of its own accord refer a measure to the voters. The voters may take the initiative and require the legislature to put a particular bill passed by it on the ballot before enforcing the same. An initiative petition may be presented bearing the signatures of a certain number of voters and asking that a measure be put on the ballot.

In some States, the use of initiative and referendum is very popular, e.g., California, but in some others, it is not so, e.g., Massachusetts.

The supporters of direct democracy point out that the devices of initiative and referendum make democratic government more democratic. The people come to have control over legislation. The system has its educative value. There is a general public discussion of the merits and demerits of the proposed legislation. Newspapers devote their columns to the issues before the people. According to Lord Bryce, direct legislation is "unequalled as an instrument of practical instruction in politics." The system also gives a chance to the silent section of the electorate to make its influence felt. It keeps legislative bodies on their guard and prevents the representatives from becoming unrepresentative.

However, critics point out that direct legislation is not an unmixed blessing. It weakens the civil rights of the individuals. The Constitutions can be changed at any time and thereby the liberties of the people can be taken away. The majority can ride roughshod over the minority at any time. To quote Hamilton, "Give the power to the many and they will oppress the few." It is also pointed out that direct legislation is not legislation by the people but legislation by a minority of the people. The system of recording the opinions of the voters is defective. They have either to say 'yes' or 'no'. The choice is only between two fixed alternatives and there is no scope for any discussion or variation. The result is that in many cases, votes are cast mechanically in favour of or against a particular bill. The system also puts an additional burden on the voters and weakens the sense of responsibility of the members of the legislature.

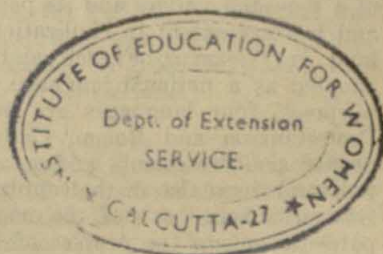
According to Prof. Munro, "The supporters of direct legislation magnify its merits, the opponents overstate its defects. Direct legislation has not ended the power of political bosses or destroyed



the party-system or eliminated the influence of the pressure groups, or made all the laws as righteous as the Ten Commandments. Law-making continues to be something of a racket, with organised minorities endeavouring to bludgeon people in the people's name. On the other hand, direct legislation has not led to the unbridled rule of the demagogue nor has it seriously impaired the fundamental rights of the citizen. Laws passed by means of the initiative and referendum have been, on the whole, no better and no worse than laws passed by legislatures.

### SUGGESTED READINGS

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|----------------------|--|
| <i>Beard, C. A.</i>  | : American Government and Politics.          |
| <i>Muaro, W. B.</i>  | : The Government of the United States. 1947. |
| <i>Potter, A. M.</i> | : American Government and Politics           |



## CHAPTER 16

### THE SWISS CONSTITUTION

#### Introductory

The study of the Swiss Constitution is important from many points of view. According to Brooks, Switzerland "is a laboratory of adventurous experiments, and her success contributes to the instruction of all republican peoples." The Swiss Republic is one of the oldest and best democracies of the world. It has always been a Republic and never a monarchy. The system of direct democracy finds its full application in this mountainous country. According to Buell, Switzerland "has demonstrated the possibility of close co-operation between peoples who at one time were independent of each other politically and who today are widely divided by the language and religion." "One of the most unique and challenging features of Swiss nationhood is its violation of the nationalistic canons of demographic and cultural unity." Switzerland presents before the world a new experiment in the form of executive, *i.e.*, plural executive. The plural executive is a combination of ministerial responsibility and permanence of tenure. Switzerland has a tradition of unbroken neutrality which is unique in the world.

Switzerland is a small country covering an area of 15,976 sq. miles and with a population of about 4½ millions. This is a country of a thousand valleys and its people differ in race, religion, language and to some extent in civilization. The three languages in Switzerland are German, French and Italian. In 1938, Romansch was adopted as a national language. The result is that for all federal purposes, four languages are in use. The two main religions are Protestantism and Roman Catholicism. About two-thirds of the people are Protestants and one-third Catholics. There are a few thousand Jews also in the country. In spite of all these differences, Switzerland is "one of the most united and certainly the most patriotic among the peoples of Europe."

According to Lord Bryce, "A strenuous patriotism bracing up the sense of national unity, and abounding variety in the detail of social, economical and political life, coupled with an attachment of local self-government, which have been the life-breath of the original cantons, passed into the minds and hearts of others also, making them wish to share in the ancient traditions, and contributing to the overthrow of the oligarchy in the cities even where, as in Bern, it had been strongest."

Switzerland is a mountainous country and nature does not offer much in the form of raw materials or mineral resources. However, the hostility of nature in Switzerland has been "mastered by man, civilized by him and stamped everywhere by his presence, his labour and his activities." Swiss success is due to the labour of the peo-



ple which is "reinforced by a practical intelligence of quite an exceptional quality." The Swiss people enjoy equality and prosperity and no wonder "there is no proletariat, no misery and no hovels."

### Historical

The Treaty of Westphalia of 1648 is a great landmark in the constitutional history of Switzerland. It was that treaty which ended the Thirty Years' War in Europe and recognised the independence and sovereignty of Switzerland. At that time, there were 13 Cantons and this state of affairs continued up to the French Revolution which "swept over Europe like a tornado, uprooting everything in its track." In 1798, the French armies entered Switzerland and the old system was completely upset. The so-called Helvetic Republic lasted from 1798 to 1803. In 1803 was passed the Act of Mediation which restored the old confederation and the autonomy of the cantons. After the overthrow of Napoleon, the Congress of Vienna restored the Old Government of Switzerland in 1815. The number of the cantons rose to 22. The cantons took an oath to observe a federal agreement by which each canton was left free to frame its own Constitution. However, the cantons were united for purposes of defence, peace and preservation of liberty. The Federal agreement of 1815 achieved 'unity in diversity'.

In the 1840's, there was a civil war in the country on account of the revolt of the seven Catholic cantons which united themselves into a league known as the Sonderbund. The cantons were defeated after a fighting of ten days. In 1848, the Constitution was revised in such a way as to satisfy some of the demands of the Catholic cantons. Under the Constitution of 1848, the Federal Government was not strong and ultimately the Constitution was amended in 1874. The new Constitution came into operation on 29th May, 1874, and is the present working Constitution of Switzerland.

### Characteristics of the Constitution

(1) The Swiss Constitution is a written document like that of the U.S.A. although its size is double of that of the American Constitution. Although the Swiss Constitution is a written Constitution, certain conventions have also grown up. The Constitution provides that the Federal Government shall have the right to determine the conditions under which aliens can be naturalised in the cantons. In spite of this provision, the Federal Government has not intervened in this matter and each canton is allowed to have its own rules of naturalisation.

(2) *Method of Amendment of the Constitution.* Switzerland has a rigid Constitution although it is not so rigid as the American Constitution. There are two kinds of amendments, total and partial. The total amendment took place in 1874. However, the procedure for total or partial amendment or revision is the same.

A total or partial revision of the Constitution can be made if both the Houses of Federal Assembly approve of the amendment and the same is also approved by a majority of the Swiss cantons.

and a majority of the citizens of Switzerland. However, if one House of the Federal Assembly approves of the amendment and the other does not, the question whether there should be a revision or not is referred to the people for their approval. In such a case the amendment is not submitted to the cantons for their approval. If a majority of the citizens of Switzerland express themselves in favour of revision, fresh elections have to be held to the Federal Assembly, the proposed amendment is then put before the newly-elected Houses of the Federal Assembly and if it is approved by them, the same is submitted to a referendum of the cantons and the people. If the amendment is approved by a majority of the cantons and a majority of the people, the amendment is considered to have been approved and becomes a part of the Constitution.

The citizens of Switzerland can also take the initiative in amending their Constitution. The number of signatures required for initiative for total amendment of the Constitution is at least 50,000. The amendment is put to the vote of the people for their approval and if there is a majority in favour of the proposed amendment, new elections are held. The proposed amendment is then submitted to both the Houses of Federal Assembly and if it is accepted by the Federal Assembly, it is submitted to a referendum of the people and the cantons and a majority in both cases is necessary.

In the case of partial amendment of the Constitution by means of initiative, the procedure depends upon the fact whether the proposal is formulated or not. In the case of an unformulated proposal, if the Federal Assembly approves of it, it must submit the amendment to the referendum of the people and the cantons after framing the amendment in a regular manner. However, if the Federal Assembly does not approve of the unformulated amendment, then the question whether the partial amendment should take place or not must be submitted to the people for their verdict. If the proposal is approved of by a majority of the citizens of Switzerland, the Federal Assembly must put that amendment in a regular form and must submit the same for the approval of the people in the cantons. In the case of a formulated proposal for amendment, the Federal Assembly has first to approve of it and then submit the same to the referendum of the people and the cantons. However, if the Federal Assembly does not approve of it, it can recommend the same to the people for its rejection, or frame its own counter-proposals and submit them to a referendum of the people along with the original proposal from the people.

(3) Switzerland has a republican Constitution. This is so not only at the centre but also in each of the 19 cantons and 6 half-cantons.

(4) Switzerland has a liberal Constitution. The liberal philosophy of the 19th century had its effect on it. No wonder, the constitutional phraseology stresses that philosophy at every point. The Constitution declares that all citizens are equal before law. It guarantees freedom of press, freedom of speech and freedom of association. The Constitution recognises the duty of the State to



provide free and compulsory education. Public schools ought to be open to all irrespective of the religious faith. Provision is also made for the freedom of trade and commerce. The public schools ought to be managed in such a way as not to infringe the liberty of conscience or belief of any individual. However, the Jesuit and affiliated orders are prohibited. No new convents or congregations are to be set up. In some cases, the secularism of the Constitution goes to the extent of anti-clericalism.

It is to be observed that the liberalism of the Swiss Constitution has been modified in certain directions on account of the change in the outlook during the 20th century. "Efforts to overcome the baneful effects of the economic depression of the 1930's, the huge drain on the national resources required to maintain the country's neutrality in the two World Wars, the pressure of various elections on the population for special favour from the public treasury and the most universal drift to the welfare State and political collectivism have all contributed towards bringing about this change in the philosophic under-pinning of the Swiss political and economic system." The result is that the State has imposed a large number of restrictions on trade and commerce. Cartelization has also been responsible for the intervention of the State in the field of industry.

(5) Switzerland has a democratic form of government. It is pointed out that democracy and Switzerland are synonymous. "The principle of Swiss democracy is, in fact, to be communal before being cantonal and to be cantonal before being federal." The basis of political authority is local autonomy. Popular will is formed from the bottom upwards. All citizens are equal before law and every citizen has been given the right to vote. Provision is made for elections to all the legislatures. The institutions of initiative and referendum have an important place in the political set-up. The Swiss Constitution was adopted by the people by their direct vote and can be amended only by the people themselves. Nowhere in the world people enjoy so much of control over their Constitution as in Switzerland. In some cantons, there is a provision for a primary assembly of about all citizens for legislative purposes.

According to Lord Bryce, "Among the modern democracies which are true democracies, Switzerland has the highest claims to be studied. It contains a greater variety of institutions based on democratic principles than any other country." Prof. Munro pays his tribute to the Swiss democratic system in these words: "So here is a democracy that has been spared most of the ills that democracy is presumed to bring in its wake. To what causes may this good fortune be ascribed? Partly to the smallness and compactness of the country, its natural defensiveness and its varied resources. Partly also to the intelligence, patriotism and good sense of its people. Partly, again, to the relatively equal distribution of property among them and the absence of any broad hiatus between rich and poor. And, in fact finally, to sound traditions, firmly established, which form the surest basis upon which a government can rest." (*Governments of Europe*, p. 722.)

(6) It is true that the Swiss Constitution does not contain a bill of rights but certain rights have been guaranteed by the various Articles of the Constitution. Those rights are the freedom of conscience and creed, liberty of the press, the right to form associations, the right to petition, equality before law and absence of privileges on the ground of rank, birth, person or family. No extraordinary tribunals can be created for the trial of accused persons. There can be no capital punishment for political offences.

(7) The Swiss Constitution is the expression of the will of the people of the entire confederation and the cantons. The Swiss Federal Tribunal which is the highest court of justice in Switzerland possesses the power of judicial review. It can vindicate the supremacy of the Swiss Constitution against any provision of the Constitution, laws or administrative acts of cantons which conflict with it. However, it has no similar power in regard to any Act passed by the Federal Assembly. It is partly due to the fact that the people of Switzerland are an integral part of the federal legislature because laws passed by the federal legislature are referred to the people for their approval. As the people also approve of a law passed by a federal legislature, the Swiss Federal Tribunal cannot be given the power to veto the same. If a different provision had been made, that would have been tantamount to over-ruling the will of the people.

(8) *Federal System.* Switzerland has a federal form of government. Although the word used in the Constitution is "confederation", yet it is more appropriate to call it a federal government. The Swiss Constitution resembles more the American or the Australian type than the Canadian type of federation. The federal government has only those powers which have been granted to it and the residuary powers are with the cantons. The cantons are supreme in their own sphere and they can amend their Constitutions. However, three restrictions have been imposed upon the cantons. Every canton must have a republican Constitution. It must be subject to revision or amendment by popular vote. No Constitution should contain anything that is contrary to the federal Constitution. The federal government has been given the exclusive control over foreign relations, despatch and reception of diplomatic agents, declaration of war, conclusion of peace and treaties, management of the Swiss military system, maintenance of internal peace and order, ownership and control of railways, right to regulate commerce, currency, banking, management of postal system and telegraphs, weights and measures, naturalisation and expatriation, higher education, conservation of the natural resources of the country, etc. The federal government was also given concurrent power regarding the regulation of industry and insurance, construction and upkeep of highways, the control of the press and encouragement of education.

However, it is to be observed that since 1874, the powers of the federal government have been immensely increased. According to Zurcher, "Federal authority has been extended to such sub-



jects as patents, water-power exploitation, the civil and criminal law, the alcoholic beverage traffic, aerial, maritime and surface transportation, banking and social welfare projects, industrial legislation, the arms traffic, public hygiene, and the production and marketing of grain. Federal ownership has been extended to nation's telephonic and wireless communication systems and the railways. Many new sources of federal taxes have been created, and considerable number of federal subsidies to the cantons have been inaugurated. Combined with other factors, such as the growth of commerce and industry on a national scale, this augmentation of federal power has necessarily exalted the prestige and influence of the government of the Confederation at the expense of the separate cantons."

According to Andre, "The danger of this tendency is that to the extent they suffer the encroachment of the central power, the cantons will gradually cease to be sovereign States at all and become simple district administrations carrying out the behests of the federal authority."

However, it cannot be denied that the spirit of local autonomy is still being maintained in Switzerland. The cantons still possess residuary powers and it is still from the cantons that the federal government draws its authority and derives its constitutional usages. Even now, a citizen of a canton is a citizen of Switzerland and there is no general law of citizenship for Switzerland. It is the courts of the cantons which administer the laws of the federal government. It is the officials of the cantons through whom the federal government acts in the cantons. The armies are still mainly under the management of the cantons although those are supervised and commanded from the federal government. The Swiss Constitution expressly recognizes the personality of the cantons. The Council of States of Switzerland represents the cantons and each canton, irrespective of its population or area, sends two representatives. No change in the federal Constitution can be made without the approval of the cantons. *The Swiss Constitution combines legislative centralization with administrative decentralization.* The powers of the federal government have not been allowed to increase without any opposition and check. In 1934, a bill was drawn up to increase the powers of the federal authorities with a view to prevent the renewal of disorders as had happened in 1932, to safeguard the army against Communist agitation, to prevent the formation of political bodies on the German lines and to put an end to the illegal activities of foreign agents in Switzerland. When the bill was referred to the people, it was rejected. It is clear that there has not been any wholesale increase in the powers of the federal government. However, powers have increased on account of the force of circum-

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1. According to Dr. Strong, "The proportion as the cantonal Constitutions depend upon the federal authority rather than upon the Constitution itself interpreted by a Supreme Court of Judges, as in the United States of America the States as a whole is less federalised." (*Modern Political Constitutions.*)



stances. A weak federal government is not competent to perform its duties.

A comparison of the federal system of Switzerland and the U.S.A. points out certain differences. In the first place, the spheres of the federal authority and the cantons are not, as they are in U.S.A., separated into watertight compartments, especially in the field of administration. There are certain departments of the administration which have been entirely centralised and in which the Federal Authority enjoys the sole control of officials. Reference can be made in this connection to the collection of customs duties, the management of the telegraphs, the telephone service and the post offices. In other departments such as civil law, the Federal Authority legislates but the cantons organise the courts, determine legal procedure and appoint judges. For the execution of many federal laws, the Federal Authority makes use of the administrative machinery of the cantons which is to this extent placed in a subordinate position in relation to that authority. This is so in the matter of the execution of military laws.

Secondly, the Federal Government in Switzerland is vested with greater power than that in the U.S.A. It has a larger number of legislative powers than is the case in the U.S.A. It has wider powers in respect of the guarantee of cantonal Constitutions, the preservation of rights of the people, etc. The Constitution provides that the federal government guarantees to the cantons their territories, their sovereignty within specified limits, their Constitutions, the liberties and rights of their people, the constitutional rights of the citizens and the rights and powers conferred by the people on the authorities. As a condition of the guarantee, the Federal Authority may demand that the cantonal Constitution contains no provisions contrary to those of the federal Constitution. They assure the exercise of political rights according to the Republican form of government and they have been accepted by and are susceptible to amendment at the demand of the absolute majority of the people. In case of differences arising between cantons, the cantons must submit to the decisions of the Federal Authority. In the case of disturbances within a canton, the government of the canton concerned has to notify the fact to the federal executive authorised to take the necessary steps to restore order.

In the third place, the cantons in Switzerland do not enjoy the same security against the invasion of their power by the federal legislature as is the case with the States in the U.S.A. This is due to the fact that the Swiss Federal Court has no power to declare any federal law unconstitutional. Such a power is enjoyed by the Supreme Court of America.

(9) Another characteristic of the Swiss Constitution is the plural and collegiate executive. Switzerland does not possess a parliamentary form of government like that of England or a presidential form of government like that of the U.S.A. Its executive lies in the hands of a federal council which is elected by the Federal As-



sembly for four years and is irremovable and irresponsible. It is "collegium fulfilling simultaneously the functions of a government and of a chief of State."

### Swiss and American Constitutions: Distinction

Prof. A. B. Keith points out the difference between the Swiss and American Constitutions' in these words:

"(1) The executive is vested in a President in the United States and a Federal Council in Switzerland.

"(2) In the United States the President is chosen by the Electoral College composed of elected representatives from each State, whilst in Switzerland the members of the Federal Council are elected by the Federal Assembly.

"(3) The Upper House or Council of State in Switzerland has not the same weight in the Constitution as the Senate in the United States, since the consent of the latter is necessary before the President can make treaties or appoint public officers.

"(4) Party government, and consequent wire-pulling, exist in an exaggerated form in the United States, whilst in Switzerland it is almost entirely absent. This result, it would seem, follows from the manner in which the executives are appointed in the two countries, as well as from the fact that in the one case the executive is vested in a President, who appoints the various public officers, and in the other case in a council.

"(5) The States in the United States are forbidden absolutely to enter into treaties; the cantons have a limited power.

"(6) The referendum and initiative are freely used for constitutional amendment, and it is much easier to alter the Swiss Constitution than it is to change that of the United States. -

"(7) Laws of the federal authority in Switzerland may be submitted on demand to a referendum, but not so in the United States.

"(8) The Swiss federal judiciary cannot rule invalid a federal law, while the United States Supreme Court often decides against federal legislation." (*Constitutional Law*, pp. 28-9.)

### THE FEDERAL EXECUTIVE

The Federal Executive of Switzerland stands as a class by itself and is known as the plural executive. The federal executive authority is vested in the Federal Council of 7 members who are elected for a period of 4 years by the Federal Legislature. Their tenure of office finishes earlier if the National Council, which is the lower House of the Federal Legislature, is dissolved earlier. However, this happens very rarely. Although the councillors are elected for 4 years they are re-elected as many times as they desire to be elected. In certain cases their term of office has extended over

1. Refer to p. 701 of the *Governments of Europe* by Munro, 1930 edition, for a similar comparison.



20 or 32 years. The one reason why they are re-elected again and again is because they do not behave in a partisan way. They are appointed not on account of their party affiliations but on account of their administrative experience and integrity of character. "It is administrative skill, mental grasp, good sense, tact and temper that recommend a candidate."

The members of the Federal Council are usually elected from the members of the Federal Legislature although there is no constitutional bar against the election of outsiders. Any Swiss citizen who is otherwise eligible to be elected as a member of the National Council can be elected as a councillor. One restriction imposed by the Constitution is that not "more than one person from each canton may be chosen for the Federal Council" However, the custom is that Berne, Zurich and Vaud are always represented in the Federal Council. On the whole, 4 councillors are taken from the German-speaking members, 2 from French-speaking members and 1 from the Italian-speaking members.

### President of the Confederation

Out of the 7 members of the Federal Council, one member is nominated by the Federal Assembly as the President of Confederation. His position is not like the American President or the Prime Minister of England. He does not enjoy any special powers in his capacity as the President of the Confederation or the Council. Like other members of the Council, he is in charge of a department. He is simply the first among equals and is consequently described as "a President of no great importance." He gets £60 a year more than his other colleagues. No President can be re-elected for two consecutive years. However, he may be re-elected after a break of one year.

The President of the Confederation presides over the meetings of the Federal Council and has a casting vote in the case of a tie. He presides on ceremonial occasions. He receives rulers and ministers of other States. The President is a link between the various departments under the various members of the Federal Council. The Swiss President enjoys a lot of dignity and has precedence over his colleagues. However, the precedence is "a mere formal precedence; he is in no sense the Chief Executive." According to Lowell, "He is simply the chairman of the executive committee of the nation, and as such he tries to keep himself informed of what his colleagues are doing, and performs the ceremonial duties of the titular head of the State." (*Greater European Governments*, p. 319.) In spite of this, the office of the Swiss President is the highest office open to Swiss politicians and no wonder it is considered to be the crowning reward of a long career of public service.

### Position of Federal Councillors

All the members of the Federal Council occupy an equal status and enjoy equal powers. The President of the Federal Council has no hand in the choice of his colleagues as he himself is elected



in the same way and by the same body as his colleagues. The Federal Council does not act as a Cabinet. Its members do not belong to any particular party and are taken from all the important parties in the Federal Legislature. There is every possibility of differences among the members and no wonder they may oppose one another in the legislature. The members of the Federal Council do not occupy the same position as is done by the ministers in England. They may be criticised or a measure introduced by them may be turned down by the legislature. In spite of this, they are not bound to resign. To quote, "If they find themselves outvoted in any matter, they do not resign as in England or in France: they merely pocket their pride and obey the will of the legislative body with as good grace as they can muster." Again, "*The Swiss Federal Council is like a lawyer or an architect in that his advice is sought and usually heeded; but he is not supposed to throw up his job in a hurry whenever his employers insist on having done differently.*" However, when in March 1934, the bill for the maintenance of public order was rejected in the referendum, councillor Haeblerlin, who was the author of the bill, resigned. According to Lord Bryce, "In no other modern republic, the executive power is entrusted to a Council instead of to a man, and in no other free country has the working executive so little to do with party politics. The Council is not the Cabinet, like that of Britain, for it does not lead the legislature and is not displaceable thereby. Neither is it independent of the legislature, like the executive of the United States, and though it has some of the features common to both these schemes, it differs from those in having no distinctively partisan character. It stands outside party, is not chosen to do party work, does not determine party policy, yet is not wholly without some party colour."

As regards the relations of the Federal Council with the Federal Assembly, it follows neither the American nor the British practice. It follows a middle course. It is not so independent as the American President because its members are the creatures of the Federal Assembly and can be criticised by the legislature when they have their seats in the legislature. They also do not enjoy the same authority as the British Cabinet does in a parliamentary system like that of England. The members of the Federal Council have to resign their seats after they are elected as councillors. However, they are entitled to sit in both the Houses and take part in the proceedings, but they do not have the right to vote. Although they can be criticised and the bills proposed by them can be thrown out, they are not bound to resign. The Federal Assembly can give instructions to the Federal Council to do certain things in a particular way. It is stated that the Federal Council is merely a "*sort of glorified legislative drafting bureau.*" The Federal Council has to get the previous sanction of the Federal Assembly for entering into any

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1. The use of interpellations makes the responsibility of Councillors direct and continuous. However, no vote is taken for putting questions to the Councillor concerned.



treaty and a similar sanction is required after the treaty has been entered into.

In spite of all this, the Federal Council is in a strong position in its dealings with the Federal Assembly.<sup>1</sup> According to Bryce, "It is a guide as well as an instrument, often suggests as well as drafts." Some very important measures are proposed by the members of the Federal Council. Even when certain measures are introduced by the members of the legislature, those are referred to the Federal Council before being sent to the committees. The long term of office of the members of the Federal Council gives them a lot of dignity and no wonder a Federal Legislature does not turn down its proposals lightly. The Federal Legislature does not find itself strong on account of the devices of initiative and referendum. On the occasion of the World Wars in 1914 and 1939, the Federal Assembly gave "blanket" authority to the Federal Council to "take all measures for the security, integrity and neutrality" of Switzerland.

The Swiss Constitution gives a large number of powers and functions to the Federal Council. It has to enforce the laws and ordinances passed by the Federal Legislature. It is responsible for the conduct of foreign affairs. It is responsible for the defence of the country and consequently controls and supervises the army. It administers the federal finances and prepares the budget and gets the same passed from the legislature. It has also to prepare and submit to the Federal Assembly an annual report of its work on foreign and domestic affairs. It examines the treaties made by the cantons among themselves or with neighbouring States. It has to maintain law and order in every nook and corner of the country. The Federal Council is responsible for the enforcement of the treaties in the cantons through the agency of the cantons. If the government of a canton does not co-operate with the Federal Government, the Federal Council can take action. "The Councillors perform this, as it does every other duty, admirably, and there is rarely any difficulty; but when a trouble with a canton arises from any cause, the method for compulsion is a little strange." What is done by the Federal Council is that it stops subsidy to the canton and sends its troops to the canton "who accomplish their mission without bloodshed; for they do not pillage, burn or kill but are peacefully quartered there at the expense of the canton, and literally eat it into submission. This is certainly a novel way of enforcing obedience to the law, but with the frugal Swiss, it is very effective." All Federal appointments, excepting a few, are made by the Federal Council. The Federal Council is responsible for the maintenance of law and order within the country. If at the time of an emergency, the Federal Assembly is not in session, the Federal Council is authorised to call out troops and employ them wherever necessary for the purpose. However, a session of the

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1. According to Munro, although the Federal Council must always bend to the will of the legislature when the latter insists, the actual situation is that the Council more often leads the Chambers.



Federal Assembly has to be summoned immediately and the matter is placed before the same. The Federal Council can call experts for special purposes. Cases regarding the behaviour of the Federal officials are decided by the Federal Council in its judicial capacity. It is the duty of the Federal Government to see to the execution of the judgments of the Federal Tribunal and the agreements and arbitration awards upon the disputes between the cantons.

According to Lord Bryce, "It (the Swiss Executive) provides a body which is able not only to influence and advise the ruling Assembly without lessening its responsibility to the citizens, but which, because it is non-partisan, can mediate, should not arise, between contending parties, adjusting difficulties and arranging compromises in a spirit of conciliation. It enables proved administrative talent to be kept in the service of the nation, irrespective of the personal opinions of the councillors upon the particular issues which may for the moment divide parties....It secures continuity in policy and permits traditions to be formed."

According to President Lowell, the Federal Council "may almost be regarded as the mainspring, and is certainly the balance-wheel of the national government." It is the duty of the Federal Council to mediate between contending parties, adjust their difficulties and arrange compromises in a spirit of conciliation. "The influence of the Federal executive power has grown during the 50 years of its existence to such a degree as to make of it the preponderant factor in the Federal State. Upon the intelligence, foresight and activities manifested by the Federal Council in our politics, internal and external, has depended above everything else the peaceful development of public life as a whole in the Confederation and the cantons."

### **Merits of Plural Executive**

The system of plural executive as it prevails in Switzerland has many merits of its own. The Swiss Federal Council represents all shades of opinions and areas in the country. It enjoys the reputation of being impartial in its work. It not only advises and influences the Federal assembly but can also mediate, "should need arise between contending parties, adjusting difficulties and arranging compromises in a spirit of conciliation." There is also stability and permanence in the Swiss system. The Swiss executive does not depend upon the vote of the legislature for its continuance in office. It is thus in a position to follow a coherent and consistent policy. The result is that the country is able to utilise the services of brilliant and experienced administrators. Such a thing is not possible in a parliamentary system of government. The Swiss system also helps continuity in policy and the formation of healthy traditions. It "lifts the body above the transient impulses that stir the people." There is no danger of the administration becoming "groovy" on account of the public spirit and the high sense of patriotism of the people of Switzerland.



To quote Munro, "It provides a plural executive with nearly all the merits of a unified executive. It enables Switzerland to keep in office her ablest statesmen irrespective of their party affiliations."

### **Special Features of Swiss Executive**

Reference may be made to some remarkable features of the Swiss executive. As already pointed out it is collegiate or plural. There is no Prime Minister and the President of the Swiss confederation has no power to select his colleagues. He has no authority over them. Moreover, the Swiss executive is at once parliamentary and non-parliamentary. It is parliamentary in the sense that its members are chosen by the legislature. They have the right of being present in the legislature. They can introduce bills and take part in the discussions in the legislature. They carry out the will of the legislature. However, the responsibility of the executive to the legislature is enforced in different ways in England and Switzerland. In the case of England, the Ministry has to resign if a bill introduced by it is defeated in Parliament or if a bill introduced by a private member is passed by Parliament even when it is opposed by the Ministry. In the case of Switzerland, the members of the Federal Council are not expected to resign if a bill introduced by them is rejected by the Federal Assembly. They either drop the matter altogether or remodel the bill in the light of the criticism. The Swiss executive is non-parliamentary in the sense that its members are not the members of the legislature. If a member of the legislature is elected a member of the Federal Council, he has to resign his seat in the federal legislature. The term of office of the members of the Federal Council is fixed. The federal legislature has no power to turn them out earlier. It is pointed out that the Swiss executive combines the virtues of responsibility and stability. Moreover, the Swiss executive is not based on a party majority in the legislative body. Its members "are elected not only from different party groups but from party groups fundamentally opposed to each other." The non-partisan character of the Federal Council makes it virtually a permanent body. The old members are elected and re-elected so long as they are willing to serve.

### **Federal Administration**

The following are the seven departments which are under the control of the seven members of the Federal Council:—

- (1) Political department including foreign affairs, naturalisation, emigration, etc.
- (2) Finance and Customs.
- (3) Interior.
- (4) Justice and Police.
- (5) Public economy including agriculture, industry and commerce.
- (6) Posts and Railways
- (7) Military Affairs.



Each department is divided into a number of bureaux or services with a small number of federal officials. That is largely due to the fact that most of the federal functions are performed through the machinery of the officials of the cantons and the federal government does not execute them through its own officials. In spite of it, the number of the federal officials rose during the two World Wars. The growth of bureaucracy was treated as a serious danger. According to Andre, that was bound in the long run. "to compromise the spirit of a regime which is founded on cantonal autonomy and popular delegation, that is to say, a regime which is founded on confidence in men rather than on an administrative mechanism from which the human element tends to be more and more excluded."

Most of the members of the federal civil service are appointed by the Federal Council which also can take disciplinary action against them. There is no spoils system in Switzerland and no member of the civil service is removed on political grounds. There is no keen competition for jobs as the salaries are low. The public opinion is so strong that incompetent persons cannot be appointed. Moreover, "the guilty person, however strong his position may have been, must quit public life forthwith."

### **The Federal Chancellory**

The Federal Chancellory is responsible for the secretarial business of the Federal Assembly and the Federal Council. It is under the control of the President of the confederation but the ultimate control is exercised by the Federal Assembly. The Chancellor of the Confederation is elected by both Houses of the Federal legislature in a joint meeting. Although he is elected for 4 years at a time, the usual practice is to allow him to continue in office as long as he desires. According to Hughes, "The election has a fairly political flavour and regard is had to the alterations of languages and confessions." Vice-Chancellors are appointed by the Federal Council and "one of them usually acquires a sort of moral claim to the office of Chancellor before the place falls vacant." A lot of dignity is attached to the office of the Chancellor. The Chancellor is the clerk of the Federal Council. He has to meet the journalists after its meetings. When the two Houses of the Federal Legislature sit together, he acts as their clerk. He has to supervise the publication of the *Recueil des Lois* and the *Feuille Federale*. He has to countersign the Acts passed by the Federal Legislature. He has to supervise the work of translation and shorthand.

### **THE FEDERAL LEGISLATURE**

The Federal Legislature is known at the Federal Assembly. It consists of two Houses known as the National Council and the Council of States.

#### **The National Council**

The National Council is the Lower House of the Federal Legislature. It is the house of the people and the word "national" is significant. The total strength of the National Council is not fixed



by the Constitution and is changed from time to time according to the population of Switzerland. Formerly, there used to be one representative for every 20,000 persons, but that figure has been raised to 22,000 persons. What is done in actual practice is that after every 10 years, there is a census and it is on the basis of that census that the number of representatives to be returned by any canton is fixed according to the population of the canton. However, it is specifically provided that every canton or half-canton must have at least one representative in the National Council. Its object seems to be to safeguard the interests of the people living in any particular canton. Its total number is in the neighbourhood of 200. The canton of Berne sent 33 representatives to the National Council in 1943 and there are four cantons which sent only one representative. The members of the National Council are elected by direct ballot on the basis of proportional representation. Every Swiss male citizen whose age is 20 or more is entitled to vote. The constituencies are fixed by the Federal Legislature and not by the executive authorities. Membership of the National Council is a stable one and many of its members are returned more than once. Formerly, the life of the National Council used to be three years, but the same was increased to four years in 1920.

### **The Council of States**

The Council of States is just like the American Senate or the Council of States of India. It does not represent the people as such. It represents the units of the Swiss Confederation. As in the case of the U.S.A., every canton is entitled to send two representatives to the Council of States irrespective of its population or area. However, every half canton has the right to send only one representative. The total membership is 44. There is no uniform procedure in all the cantons for the election of the members of the Council of States and the same varies from canton to canton. In 21 cantons, the members of the Council of States are elected directly by the people or by the primary assemblies. In the case of four cantons, they are elected by the legislators of the cantons concerned. The term of office of the members of the Council of States varies from one year to four years. Every canton pays its own representatives in the Council of States.

It is to be observed that the National Council has an elected President and a Vice-President. This is done every year. No person can be the President of the National Council for two consecutive years. The Council of States also elects its own President and Vice-President in the same way.

### **Powers and Functions of Federal Assembly**

It has rightly been pointed out that very few legislatures in the world perform such miscellaneous functions as are done by the Federal Assembly of Switzerland. The Constitution provides that the Federal Assembly shall "consider all the subjects which the present Constitution places within the competence of the federation



and which are not assigned to any other federal authority." It is also provided in the Constitution that the Federal Council is the supreme executive authority in the country and the Federal Tribunal is supreme in matters of justice. It follows that while the Federal Tribunal is supreme in the judicial field and the Federal Council in the executive field, the Federal Assembly is supreme in the legislative field.

The Federal assembly has the power to pass the annual budget, authorise the Federal Government to raise loans, create federal offices and fix their salaries and revise the Federal Constitution. In addition to these powers, the Federal Assembly appoints the Commander-in-Chief of the army and elects the members of the Federal Council and the Federal Tribunal. The Federal Assembly approves of alliances and treaties with foreign States. It confirms treaties made by the cantons among themselves or with foreign neighbouring States. An Amendment of 1931 provides that the international treaties concluded for an indeterminate period or for more than 15 years, must be submitted to the people for their acceptance or rejection. This is to be done when a referendum is demanded by 30,000 citizens or 8 cantons.

The Federal Assembly has to adopt measures which are necessary for defence from foreign invasions and the preservation of the independence and neutrality of Switzerland. The Federal Assembly also declares war and makes peace. It is the duty of the Federal Assembly to guarantee the constitutional and territorial integrity of all the cantons. It has to interfere whenever there is a threat to the peace of any canton. The Federal Assembly controls the national army and supervises the work in the civil administration. It can also grant amnesty and pardon. Even in administrative cases, the Federal Assembly has the final authority.

It is to be noted that both the Houses of the Federal Assembly meet together for various purposes. Those purposes are the election of the members of Federal Council, the election of the President of the Swiss Confederation, the election of the members of the Federal Tribunal, the election of the Commander-in-Chief of the Federal Army, the Chancellor of the Confederation, the decision of conflict of jurisdiction between federal authorities and the granting of pardon.

### **Relations between two Houses**

As regards the relations between National Council and Council of States, both of them stand practically on an equal footing. Any bill can be introduced in either House. The members of the Federal Council sit in both the Houses and are also responsible to both of them. As regards the introduction of bills in the two Chambers, the Presidents of both the Houses meet before the session and decide among themselves as to what bills are to be introduced in any particular House. According to Dr. Strong, "Swiss legislature, like the Swiss executive, is unique: it is the only legislature in the world

the functions of whose Upper House are in no way differentiated from those of the Lower."

It is true that the Swiss Constitution put both the Houses on the same footing, but in actual practice, the National Council has become stronger than the Council of States. That is partly due to the fact that the National Council is considered to be the house of the nation and the Council of States as the house of cantons. In a democratic age, the popular house was bound to have more authority and prestige than the other.

### **Federal Assembly and Council**

As regards the relations between the Federal Assembly and the Federal Council, it has already been pointed out that although the Federal Assembly creates the Federal Council and the latter can be criticised by it, the Federal Assembly is not very strong in its relations with the Federal Council. There is no ministerial responsibility in Switzerland and the members of the Federal Council continue to hold office for years unmindful of the criticism in the Federal Assembly. The members of the Federal Council enjoy a lot of prestige and dignity on account of their impartiality and permanence and consequently whatever comes from them in the form of legislative proposals, is accepted by the Legislative Assembly. Moreover, the institutions of initiative and referendum have weakened the Federal Assembly.

It is to be observed that the work of the Federal Assembly is done in a business-like manner and consequently a lot is done within a short time. According to Lord Bryce, "The Swiss legislator is accustomed to take a middle class business view of questions, being less prone than the Germans to talk about abstract principles, and much less likely than the Frenchmen to be dazzled by tinsel phrases." To quote Munro, "This makes the Swiss Chamber a somnolent place quite different from the Palais Bourbon or the Chamber of the Dail Eireann—but it also explains why a whole year's business can be finished in seven or eight weeks."

### **THE FEDERAL TRIBUNAL**

There is only one Federal Court in Switzerland and that is known as the Federal Tribunal or Bundesgericht. This tribunal was created by the Constitution of 1848. However, its powers were increased in 1874. Subsequent amendments have also added to its jurisdiction. On account of an increase in work, the Federal Tribunal is permanently in session and its headquarters are at Lausanne which is the capital of the canton of Vaud.

It is pointed out that the location of the Federal Tribunal at Lausanne is a concession to the sentiments of the French-speaking people who were not satisfied with the concentration of all the organs of the Federal Government at Berne which is the capital of a German-speaking canton. Although most of the work of the Federal Tribunal is done at Lausanne, it has to divide itself into five



sections for criminal work and one section sits at each of the five assize districts into which Switzerland is divided for that purpose.

As regards the composition of the Federal Tribunal, it consists of 26 judges and 11 substitute judges. The Constitution requires that all the three linguistic areas should have representation on the Federal Tribunal. The judges are elected by the Federal Assembly for a period of 6 years. The Federal Assembly also elects a President and a Vice-President of the Federal Tribunal for a period of 2 years. The convention is that the judges of the Federal Tribunal are re-elected as long as they wish to serve. Any Swiss citizen who is otherwise eligible for election to the Federal Council, can be appointed a judge of the Federal Tribunal. However, in actual practice only those persons are elected who possess high legal qualifications. "While political predilections may sometimes be present, it is not alleged that they have injured the quality of the bench, any more than the occasional action of like influences tells on the general confidence felt in England and (as respects the Federal Courts) in the United States in the highest courts of those countries."

### Powers

The Federal Tribunal possesses original and appellate powers in civil, criminal, constitutional and administrative cases. As regards original jurisdiction in civil cases, it extends to controversies of a proprietary character between the confederation and the cantons, between the cantons themselves, and between individuals and the confederation or the cantons. Under certain circumstances, original civil jurisdiction extends to cases between individuals themselves.

As regards the original criminal jurisdiction of the Federal Tribunal, it is limited to cases involving treason or insurrection against the confederation, counterfeiting, violence against national officials, offences against the law of the nations and criminal charges preferred by superior confederation officials against their subordinates. This jurisdiction can be extended by legislation. The Federal Tribunal holds its sessions in 5 different centres of the country for the disposal of the criminal cases. At each of these centres, only a section of the Federal Tribunal, consisting of three judges and a jury of 12 persons from the neighbourhood, sits. It is specifically provided that an accused person can be convicted only if five-sixths of the jurors concur.

As regards the constitutional jurisdiction of the Federal Tribunal, it relates to conflicts of jurisdiction between the agencies of the confederation and the cantons, conflicts regarding inter-cantonal public law, and cases of alleged violation by cantons of personal rights secured by the Federal Constitution or cantonal Constitutions or by treaties or by agreement among the cantons.

Since 1928, the Federal Tribunal has been given the power of settling disputes regarding the legal competence of public officials. Thus the Tribunal acts as a court of administrative law. Formerly, such cases were decided by the Legislative Assembly.

It is to be observed that the position of the Swiss Federal Tribunal is not as strong as the Supreme Court of the U.S.A. or India. The American Supreme Court has the power to declare *ultra vires* the laws passed by the State Legislatures and the Congress. However, this is not the case with the Swiss Federal Tribunal. While it can declare *ultra vires* the laws passed by the legislature of a canton it does not possess a similar power with regard to the laws passed by the Federal Assembly. It is expressly provided in the Constitution that the Federal Tribunal shall administer laws passed by the Federal Assembly and such decrees of that Assembly as are of general application. It has also to act according to the treaties ratified by the Federal Assembly. That is partly due to the fact that the laws passed by the Federal Assembly are usually submitted to the vote of the people for their approval. According to Zurcher, "In view of the Tribunal's limited and unsystematic jurisdiction, it could hardly serve as an effective instrument for reviewing federal legislation judicially, even if such a power inhered in it."

### POLITICAL PARTIES

Political parties are necessary in a country like Switzerland which is run on democratic lines. Elections for the Federal Assembly have to be conducted. Elections for legislatures of the cantons have to be fought. Elections for the local bodies have to be contested. No wonder, we have political parties in Switzerland for a long time.

In spite of the diversities of racial character, religion, speech, forms of industry and conflicting economic interests, party strife is less acute and party spirit less intense in Switzerland than elsewhere. Nowhere "has the ship of State been so little tossed by party oscillations." This Swiss phenomenon is due to many causes. The federal executive in Switzerland is non-partisan and permanent. The members of the Federal Council are not elected on party lines. Every effort is made to include the representatives of the various parties and interests. Moreover, when once a person is appointed a member of the Federal Council, he is allowed to continue as long as he pleases. The result is that when new elections are held for the Federal Council, there are no prizes to be fought and won because in many cases the old members of the Federal Council have to be re-elected. As there is nothing to be gained, there is no inducement to party struggle. It is pointed out that the existence of the institution of referendum also weakens the party spirit. All important questions have to be referred to the people for their final approval and the parties in the legislature lose all their importance. Even if a party has a majority in the legislature, it is not sure of putting its legislation on the Statute book if the people decide to veto the same. No wonder, the party spirit is damped. Federal appointments are not made on party lines. They are usually made on the basis of merit. Salaries attached to these offices are not tempting and consequently there is no scope for party struggle for getting those loaves and fishes. Moreover, the people of Switzerland put the interests of the country first and



ignore their domestic differences. According to Lord Bryce, the absence of vital issues before the country for a long period, the absence of great discontentment with existing economic conditions, the absence of class hatreds and the absence of the stuff out of which party spirit is created, are responsible for the present non-partisan nature of the Swiss political parties. It is also pointed out that the members of a party do not all sit together in the legislature. As a rule, they sit according to the cantons irrespective of their party affiliations. Even in the matter of nomination of candidates for elections, ordinarily "a man who is highly respected or who has done valuable service, is often put on all the tickets irrespective of party, and that in close districts, it is not uncommon to agree on a ticket which includes men from different groups." According to President Lowell, "In a community which has enough native honesty and intelligence to prevent personal corruption in its public-men, and which does not require the friction of the parties to stimulate progress, it is certainly a great advantage to get rid of the agitation, partisanship and the absence of a perfectly ingenuous expression of opinion, which are inseparable from party government."

### History of Political Parties

The history of political parties can be traced to the Constitution of 1848. At that time, there were two prominent groups of politicians who were supported by the Protestant German cantons and the Protestant French cantons and they came to be known as the Liberals and the Radicals. The Liberals stood for *laissez-faire* principles, moral and cultural freedom and republican political institutions. The Radicals included younger people who were more progressive and liberal in their views. They stood for direct legislation and economic liberty. In spite of their differences, both the groups co-operated with each other in framing the Constitution of 1874 which embodies the principles of both the groups. Opposed to the Liberals and the Radicals was the Catholic Conservative Party which consisted of those elements who were responsible for the formation of the Sonderbund and the War of Secession. This party paid "only grudging allegiance to the constitutional settlement of 1848 into the acceptance of which it had been virtually coerced." It was a very compact and well-organized political party in the country.

It is to be observed that from 1848 to 1890, the Radicals and the Liberal were in power and the Catholic Conservative Party was in the opposition. In 1891, the Liberal Party went into opposition and a Conservative-Radical coalition came into existence. The Liberal Party became very weak and was reduced to the position of a very minor party. The Social Democratic Party came into existence after 1880 and it gained in strength with the passage of time. A Farmers' Party was organized in 1918 and it gained strength in due course of time.

### Party Programmes

The Catholic Conservative Party still maintains its old opposi-

tion to federalism to some extent. It is still in favour of the rights of the cantons and is particularistic in its approach to national issues. It stands for special protection for the family and private property. It encourages private philanthropy and co-operative institutions. It stands for the rights and privileges of the Catholic Church, in Switzerland. It believes that the best safeguard for social peace and discipline lies in morals and education which can be put under the control of the Church. A Socialist wing has made its appearance within the party and consequently the party adopts a benevolent attitude towards labour problems and labour legislation. It recognises the dignity of labour and the right of the workers to have a living wage. It favours the growth of labour unions and collective bargaining. It serves the interests of the peasants, artisans and petty businessmen.

As regards the Radical Party, it stands for the rights of the federal government as opposed to those of cantons. However, it is more cautious on the issue of centralization than it used to be before. The supporters of the party are prepared to allow the cantons to share authority with the federal government whenever new powers are added to the federal government. They believe in secularism, political democracy and personal liberties. They stand for popular initiative for federal legislation. They advocate tariff protection and public monopolies. They demand that adequate measures should be adopted for the defence of the country. In foreign affairs, they stand for neutrality.

The Farmers' Party has essentially an agrarian programme. It advocates the grant of money by the federal government to the agricultural producers. It stands for high tariffs to secure the domestic market for the Swiss agriculturists. It stands for legislation to give relief to those farms which are mortgaged. It wants the government to fix prices for agricultural commodities. In addition to these, the party stands for adequate measures to be adopted for the defence of the country. It is prepared to strengthen the hands of the federal government at the cost of the cantons in the interests of the nation. It is more conservative than the Radicals.

The Social Democratic Party of Switzerland is neither radical nor militant like the Socialist parties of other countries. It retains the conservative outlook of the people of the country. The Socialists believe in democratic and pacific methods for the realisation of their objects. They believe in parliamentary institutions. They stand for a healthy combination of capitalism and socialism. They advocate public planning in the economic field. They also stand for the nationalisation of monopolistic industries, banks and credit institutions. The government should fix the minimum wages in the enterprises. The party also advocates direct democracy. It is one of the most powerful supporters for suffrage for women.

There are other minor political groups in Switzerland such as the Communist Party, the Swiss Labour Party, the National Front, Young Conservatives, New Switzerland, the National League and Peasants' League. These groups are of minor importance.



It is to be observed that the lines of parties do not coincide with those of language and race. The major parties are distributed geographically. The national party structure is built upon the foundations of the party structure in the cantons. At present the major parties have an annual party diet and a permanent central committee consisting of members chosen by the party diet or the cantons, or both the committee and the cantons. The party diet reviews the work of the Federal Assembly and the federal officials. It also discusses the legislative programme of the party in the future. It passes resolutions for the guidance of its members in the legislature. The party organization also issues manifestoes for the guidance of the leaders and propaganda among the people. There are also newspapers and journals of the parties. However, there are no great party leaders in Switzerland. Party funds are not great because much money is not required for elections. To quote Bryce, "It is not worth anybody's while to spend money on party work except for some definite public purpose. Nobody in Switzerland has anything to gain for his own pocket by the victory of a party, for places are poorly paid. Federal places do not change hands after an election as cantonal places are not important enough to deserve a costly fight, nor could the expenditure of money at an election escape notice in these small communities."

### DIRECT LEGISLATION

Switzerland is the home of direct democracy and direct legislation and no wonder Lord Bryce remarks that "nothing in Swiss arrangement is more instructive to the students of democracy, for it opens a window into the soul of the multitude. Their thoughts and feelings are seen directly, not reflected through the medium of elected bodies." Switzerland is famous for the institutions of referendum and initiative. It is with the help of these institutions that the people of Switzerland have been able to take direct part in the legislation of the country and that is why it is stated that the people of Switzerland constitute the "third House". It is true that the institutions of referendum and initiative are essentially complementary in character, but it is wrong to maintain that they are political twins. Although they are often found together, yet they are separate from each other and one can exist without the other. Even the history of these institutions in Switzerland shows that they were not introduced at the same time in all the cantons. The canton of Gall adopted referendum in 1831. The canton of Bale adopted it in 1832, Valais in 1839 and Lucerne in 1841. It took another 30 years for most of the cantons to adopt this institution. Compulsory referendum was provided for constitutional legislation in 1848 and 1874, but optional referendum for ordinary laws was provided only in 1874.

### Referendum and Initiative: Distinction

There is a fundamental distinction between referendum and initiative. The institution of referendum arms the people with a

veto on the acts of the legislature. Even when a law has been passed by the legislature, it can be set aside by the people when the same is referred to them for their approval or rejection. Referendum is a negative institution which enables the people to negative a bill passed by the legislature. It merely enables them to protect themselves against the trickery of their legislators, but it does not help them to put on the statute book a law which they want but which the legislature is not prepared to pass. On the other hand, initiative is a positive institution. It enables the people to put on the statute book even those laws which legislators are not prepared to initiate and pass. It gives the people the power to cut the way for the enactment of their own ideas into law. It is a creative institution in the sense that a law can be created even if the legislature is opposed to it. All that is required is that a specified number of persons must take the initiative and then the process starts. It has rightly been pointed out that referendum is like a "shield with which the people ward off undesirable legislation" and initiative is like a "sword with which it cuts the way for the enactment of its own ideas into law."

### Referendum

Referendum is of two kinds: compulsory and optional. In the case of compulsory referendum, the law passed by the legislature does not become law unless and until the same has been referred to the people and approved of by them. In the case of optional referendum, it is not necessary that every law passed by the legislature must be referred to the people for their approval. In certain cases, reference may be made and in certain other cases reference may not be made. In the case of optional referendum, the bill is submitted to the vote of the people if a demand is made for that purpose by a specified number of voters. In the case of Swiss confederation, optional referendum takes place if 30,000 voters or 8 cantons demand the same. Although optional referendum can be demanded in case of all laws, the general practice of temporary character or those enacted to meet some emergency are not submitted to the vote of the people. The annual budget, treaties and decisions of administrative nature, are not submitted to the popular vote.

It is to be observed that there is compulsory referendum for all amendments in the Federal Constitution. An amendment of 1921 also provides that all international treaties concluded for an indefinite period or for more than 15 years must be submitted for the approval of the people if a demand is made by 30,000 citizens or 8 cantons. Likewise, in the case of cantons, referendum is compulsory in case of all amendments to the Constitution of a canton. As regards ordinary laws and resolutions passed by the legislature of a canton referendum is compulsory in 8 cantons and optional in 7 cantons. Where it is optional, a specified number of voters can demand a referendum and that number varies from one canton to another. In certain cantons, a distinction is made between different



classes of laws, but it is optional in others. In the case of one canton, there is no provision for referendum.

As regards the procedure in the confederation, when a constitutional amendment has been passed by the National Assembly, the same has to be referred to the people for their approval. In order to be effective, that amendment must be approved of by a majority of the citizens' votes and a majority of the cantons. If one of the Houses of the National Assembly votes in favour of an amendment, the matter has to be referred to the people as to whether they want the amendment or not. If the people vote in favour of the amendment, the National Assembly is dissolved and new elections are held. Amendment has again to be passed by the newly-elected Houses of the Federal Assembly. If the Federal Assembly passes the same, the amendment is again submitted to the people for their approval and a majority of the people voting and a majority of the cantons is again necessary.

In the case of non-constitutional amendments or laws or resolutions, when those have been passed by the National Assembly, those are published and circulated. Within 90 days of their circulation, either 8 cantons or 30,000 voters can demand an optional referendum. Referendum can be demanded only on those measures which are of a general nature and are not considered to be urgent.

A similar procedure is followed in the cantons with regard to referendum. Measures of a temporary character or those framed to meet any particular emergency are not submitted to the vote of the people in most of the cantons. In the case of those cantons where referendum is compulsory for all laws, what is actually done is that as soon as a law or decree is passed, an announcement is also made as to when the vote of the people is to be taken and every citizen is provided with a copy of the law along with the explanatory notes on the same. Before actual voting takes place, public meetings are held both in support and against the law. There is a lot of discussion in the press also. In some cantons, voting is compulsory and the voter who absents himself is liable to be punished.

### Initiative

The initiative is also of two kinds: formulative and in general terms. When the initiative is in general terms, it is the duty of the legislature to draft, consider and pass the law. In the case of formulative initiative, the bill comes in a complete form from the people and it is the duty of the legislature to consider the same in the form in which it comes from the people.

It is specifically provided that 50,000 citizens can demand a total revision of the Federal Constitution. If the amendment is accepted by a majority of the people voting in a referendum, new elections for the National Assembly are held and when the amendment is passed by the new National Assembly, the same is submitted for the approval of the majority of the people and the majority of the cantons.

In the case of a partial amendment of the Constitution, the

procedure depends upon the fact whether the initiative is formulative or in general terms. If the initiative is formulated in specific terms and if the National Assembly or one House approves of it, the proposal is submitted for the approval of the people and the cantons. If the National Assembly disapproves of it, it may advise the electorate to reject the proposal or itself submit an alternative proposal along with the proposal coming from the people. If the initiative proposal is in general terms, the National Assembly has two alternatives. If it approves of the proposal, it must submit the proposal for the approval of the people. If the people vote in favour of it, the National Assembly must draft an amendment expressing the sense of the initiative proposal and submit the same to a regular vote of the people and the cantons.

In the case of cantons, a specific number of citizens can demand a total revision of the Constitution or propose some amendments to the same. An absolute majority of citizens is required for amending the Constitution. In the case of ordinary laws, a prescribed number of citizens can propose a new law or submit the same to the Council of the canton. It is the duty of the Council to refer the proposal to the people for approval. If the people approve of the amendment, it is the duty of the Council of the canton to prepare the law and send the same to the people for ratification. If the proposal comes from the people in a formulated form and not in general terms, the Council can oppose it and refer the same to the people for rejection or also submit along with the same a counter-proposal of its own for acceptance or rejection.

### Working of Direct Legislation

It is to be observed that the demand for direct legislation in Switzerland has arisen out of a desire on the part of the people to have a direct hand in the making of laws. In the case of the U.S.A. the demand for direct legislation has arisen because the people feel dissatisfied with the work of their legislators on account of corruption and other factors. The people of Switzerland have made a judicious use of the institutions of referendum and initiative. It is pointed out that between 1848 and 1945, there were 139 federal referenda and in 65 cases the people voted in the affirmative and in 74 cases in the negative. It has been seen that the people of Switzerland are more conservative than their spokesmen in the legislature. They have rejected those bills which are very comprehensive or complicated. Those bills which involve public expenditure have also been rejected. As a matter of fact, the largest number of negative votes ever cast in a federal law were those thrown against a bill for pensioning officials.

On the whole, the system of direct legislation has worked successfully in Switzerland. The institutions of referendum and initiative have become permanent "not only because the people as a whole are not disposed to resign any function they have assumed, but also because it is entirely conformable to their ideas and have worked in practice at least as well as a purely representative system worked before or would be likely to work now." According to



Brooks, "It is certain that in Switzerland the initiative and referendum have not caused the break-up of political organizations. On the other hand, they have increased somewhat the influence of minority parties." No wonder, the system is considered to be "a vital and free functioning part of the Swiss political organism."

### Causes of Success

The successful working of direct legislation in Switzerland is attributed to many causes. It is pointed out that it is partly due to "the historical antecedents of the Swiss people, to their long practice of self-government in small communities, to social equality and to the pervading spirit of patriotism and sense of public duty." According to Lord Bryce, direct legislation has a natural growth in Switzerland and that is due to the soil of that country. "There are institutions which, like plants, flourish only on their own hill-sides and under their own sunshine." It is pointed out that if direct legislation has not succeeded so well in other countries, that is partly due to the fact that circumstances in those countries were different and the general climate and soil were not favourable for its growth.

Another factor which has been responsible for the success of democracy in Switzerland is the quality of independence of the people. It is rightly pointed out that "the Swiss voter, always independent, is more independent when he has to review the action of his legislator." The Swiss voters do not vote on party lines and the political parties cannot count upon the support of the people. The result is that the people can be expected to deal with the laws submitted to them in a dispassionate manner. The Swiss voters have shown judgment and cool-headedness, the absence of passion and the presence of intelligence. People of Switzerland are highly educated and their best minds are more sagacious than imaginative. No wonder, they are cautious in their judgment and are not carried away by the demagogues.

According to Dubs, "Survey the countries of the world, you may find elsewhere greater political achievements, but assuredly in no country will you meet as many good citizens of independent national and sound practical judgment; nowhere so great a number of public men who succeed in fulfilling their functions in minor spheres with dignity and skill; nowhere so much a proportion of persons who, outside their daily round, interest themselves so keenly in the welfare and in the difficulties of their fellow citizens."

### Merits of Direct Legislation

(1) Reference may be made to merits and demerits of direct legislation in general. As regards the merits, it cannot be denied that the institutions of referendum and initiative emphasize the sovereignty of the people. The people ordinarily count only after many years when general elections are held. Under the system of direct legislation, they are invited to give their opinion on the legislation of the country from time to time. In this way, the real wishes of the people can be found out and we have a barometer of public opinion on any particular point. The law of the country

comes to have a greater force on account of its approval by the people who are the ultimate fountain of power.

(2) It is pointed out that direct legislation reduces the importance of political parties and discourages the party spirit. Much power is not left in the hands of the legislators and they cannot be sure of the ultimate passage of the law. The people may refuse to ditto the actions of their legislators.

(3) It has already been pointed out that referendum is a shield with which the people can ward off undesirable legislation and the initiative is a sword with which the people can cut their way for the enactment of their own ideas into law.

(4) The educative value of direct legislation cannot be over-emphasized. The people are provided not only with the text of the laws on which they are required to vote but also with explanatory notes. Every effort is made to help the people to understand the pros and cons of the proposed legislation. The people can be expected to take more interest in public affairs on account of their knowledge.

(5) According to Lord Bryce, direct legislation "helps the legislature to keep in touch with people at other times than at general elections and in some respects a better touch, for it gives the voters an opportunity of declaring their views on serious issues apart from the destructive or distorting influence of party spirit.

(6) Direct legislation is the most effective method of avoiding deadlocks between the Houses of the legislature. In the case of Switzerland where the executive has not been given any veto power and both the Houses of the National Assembly have equal powers, direct legislation comes to the rescue. According to Bryce, "There must somewhere in every government be a power which can say the last word, can declare decision from which there is no appeal. In a democracy, it is only the people who can put an end to the controversy."

(7) As referendum protects the people against the legislature's sins of commission, so the initiative is a remedy for their omissions.

(8) In the case of direct legislation, the people have the power to put in the statute book a law even in the teeth of opposition of the legislature. The will of the people is allowed to prevail. "Why should a body of persons chosen by the people close the powers against the people themselves allowing only such proposals as take their fancy to pass through so that the people can deal with them?"

(9) The system of initiative lessens the chances of political trouble in the country as the people are in a position to initiate that legislation which would not have been otherwise initiated by the legislature and thereby create bitterness and heart-burning.

(10) Another advantage of direct legislation is that the people are in a position to separate a particular law from the general programme of the party in power. What happens at the time of elections is that every party puts forward its own programme before the people and the people vote for that party whose programme appears to be most attractive. Even if the people vote for a particular party,



it does not mean that they have approved of all the points in the programme of that party. That only means that at the time of elections, they approve of most of the points in the programme of the party. If there were to be no direct legislation, the people will have to put up with all the laws passed by the majority party in pursuance of the programme approved of by the people. However, in the case of direct legislation, the people are in a position to veto those laws which relate to that part of the party programme which they did not approve of. This is a very valuable advantage.

### Demerits

(1) Many demerits of direct legislation can be pointed out. Direct legislation weakens the sense of responsibility of the legislators. That is due to the fact that the legislators never forget that they are not the ultimate authority to pass laws. They feel that if any mistake is left in a law passed by them, the same can be rectified by the people. The legislators may be disposed to pass measures which their judgment disapproves, counting on the people to reject them, or may fear to pass laws lest they should receive defeat from the popular vote. If the people put the blame on the legislature for having passed a foolish law, the legislators can also say in defence that the same could have been rejected by the all wise people. Obviously, such a state of affairs creates a division of responsibility which is suicidal for efficient working.

(2) Modern legislation is becoming more and more complicated and technical and the result is that it is not possible for the people to understand all its implications. In spite of all their care and devotion to public duty the people "have not, and cannot have, the knowledge needed to enable them to judge, nor can the pamphlets distributed and speeches made by the supporters and opponents of the measure convey to them the requisite knowledge. How can a peasant of Solothurn in a lovely valley of the Jura form an opinion on the appropriations on a financial bill? Is the object a laudable one? Is it worth the money proposed to be allotted? Can the public treasury afford the expenditure?"

(3) The method adopted for discovering the will of the people in the case of direct legislation is not a proper one. The voters are merely asked to say either "yes" or "no". This is a very unsatisfactory procedure. Every law is bound to have many provisions and it is impossible to think that all of its provisions will be approved of by the people. There is absolutely no scope for any discussion or amendment of any bill. Either the voters have to approve of the whole or reject the whole. This wholesale acceptance or rejection is the most unsatisfactory feature of direct legislation.

(4) Experience shows that the people do not take interest in direct legislation. It must be inconvenient to study all the literature on the proposed laws and then to take the trouble to go to polling station on many occasions. Reference is made in this connection to what is known as "electoral fatigue".



(5) Many bills are delayed because they have to be referred to the people for their approval. Moreover, the people may not approve of them even if those are in the best interests of the country. The country may suffer on account of the conservative and reactionary attitude of the people towards certain problems.

(6) The bills initiated by the people are very "crude in conception, unskilful in form, marred by obscurities and omissions." The language of the bills is defective and there is every possibility of litigation on account of conflicting interpretations. According to Lord Bryce, "Sometimes the prudence of the Cantonal Council, dissuading the people from the particular plan proposed and substituting a better one, averted unfortunate results, while in the case of an ill-considered banking law, the federal authorities annulled the law as inconsistent with the federal Constitution. Several times the people have shown their good sense in rejecting mischievous schemes proposed by this method."

(7) Brilliant persons are not prepared to offer themselves as candidates for the legislatures. They do not feel inspired to spend their money and time to become members of the body which has not the power to make laws which are considered to be necessary for the good of the people. If the laws passed by the legislature can be set aside by the people, brilliant persons would prefer to remain a part of the people rather than become legislators.

(8) According to Droz, direct legislation encouraging demagoguery and the growth of professional politicians who constantly try to spread discontentment among the people.

(9) According to Esmein, direct legislation is vicious both in theory and practice. It is unsound in theory because it involves appeal from knowledge to ignorance and from responsibility to irresponsibility. It is unsound in practice because it puts the final power in the hands of the illiterate people and thereby slows down the political, economic and social growth of the country. It is meaningless to ask a cowherd or a stable-boy to give his opinion on a law concerning banking about which he knows nothing. Neither the man in the street understands the modern complicated legislation nor he can do so even if he tries to do the same. That is due to his limited capacity.

According to a Swiss legislator, "The referendum prevented what little good that we wish to do, but simply by standing as a warning before us, averted much evil. In spite of possible backward movements, it did not condemn democracy to a halt, but has given steadiness to progress itself."

### Government of Cantons

According to Andre, "The canton is the living reality much more so than the Confederation which may well appear to him so little more than a cold administrative mechanism. Each citizen feels himself a Swiss as a matter of course, but before being Swiss he is a native of Zurich, or Glarus or Valais." It is true that on



account of centralising tendencies; the Federal Government is becoming more and more stronger and consequently less powers are being left in the hands of cantons, but in spite of this cantons play a very important part in the lives of the people of Switzerland. Even today, most of the work of the Federal Government in the cantons is being done through the machinery of the cantons. Any person who is a citizen of a canton is also a citizen of Switzerland. The cantons are sovereign so far as their sovereignty is not limited by the federal Constitution. They exercise all rights which are not delegated to the Federal Government. All residuary powers are enjoyed by the cantons. Every canton is allowed to enter into treaties with other countries.

There are 19 cantons and 6 half-cantons.<sup>1</sup> These cantons differ both in area and population. In 1941, the population of Berne was 728,916 and its area 2,658 sq. miles. In the same year the population of Zug was 36,643 and area 93 sq. miles. The population of Basel-Stant was 169,961 and its area 14 sq. miles. The Swiss cantons joined the confederation at different times from 1291 to 1815. Every canton has its own Constitution which can be amended by the people of the canton. The only restriction imposed is that the Constitution of the canton must not conflict with the federal Constitution.

### **Landsgemeinde**

Broadly speaking, we can divide cantons into two parts from the administrative point of view. In six cantons, there exists direct democracy and in the rest of the cantons there are representative assemblies. The Landsgemeinde is the most picturesque and fascinating of all the political institutions of Switzerland. It is a political assembly of all the citizens of the cantons and this meets once a year in the open air under the presidency of Landamman who is elected for a year. Every adult male citizen is entitled to attend the Landsgemeinde and participate in its deliberations. All political authority is vested in this assembly. It not only enacts new laws but also ratifies those which have been passed by the Executive Council. It passes resolutions and gives its decisions on the various problems affecting the cantons. It not only elects the Executive Council but also the other important officials of the Canton including judges. According to Lloyd and Hobson, the Landsgemeinde represents the purest form of democracy in which the sovereign powers of the people is directly exercised in all the critical acts of government by the full assembly of citizens, forming the largest and most conspicuous example of what Rousseau and certain other political philosophers regarded as the only democracy.

Andre has given the following account of the meeting of the

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1. According to Brooks, "Each of the half-cantons has a government of its own as complete that of any of the whole canton. It counts for only half as much as a whole canton, however, in a constitutional referendum, and sends one representative to the Upper House of the Federal Legislature, whereas each of the whole cantons sends two."



Landsgemeinde of the Canton of Glarus on 5th May, 1947: "On Sunday at half past nine of a reasonably fine morning the sovereign people assembled in the market square of the little town of Glarus. Five thousand men were gathered together in an elongated circle beneath the gabled old houses of the square, the front row sitting on the benches, those at the back standing up. . . . In the centre of the large circle a platform has been erected, complete with loud-speakers, and gathered around it are the children of the local schools, for this is part of their civic education. The authorities arrive in procession, very soberly and correctly dressed in morning coats and top hats, preceded by ushers in red medieval uniforms. The Landamman himself carries a sword as a symbol of the people's sovereignty. . . . The first act of the assembly is to take the oath to the Constitution. All hands are raised. Then the outgoing Landamman submits himself for re-election together with all his collaborators. After that it is the turn of the judges. The list of candidates for the Regierungsrat or executive body, has already been agreed to by the various political parties and it contains the names of three Radicals, two Democrats, a Socialist, and a Catholic. Other names are suggested as judges from the body of the meeting and put to the vote. Several of these proposals made direct by the assembled people are carried after a show of hands. The re-elected Landamman then delivers a speech in German after which a discussion takes place but in dialect. . . . A 'memorial of about 150 pages is already in the hands of the electors and it contains details of the Bills proposed by the Landrat, or cantonal council. This document is a very serious affair and I am told that it is carefully studied by the citizens, even in the remote chalets in the mountainous districts, in preparation for the forthcoming assembly. The people do not take these discussions lightly for they are well aware that their own affairs and interests are at stake. . . . The agenda consists of thirty-two proposals; a project for cantonal insurance against crises, and various others relating to the question of paid holidays, Sunday rest, hydro-electric power and so on. The Landamman on the platform above the assembly summarizes each proposal. After that various citizens mount the platform to address the assembly on the point at issue, to make suggestions for amendments and so on. Some of the amendments proposed are subsequently accepted, others rejected, and I find it particularly interesting to note that all amendments of a demagogic character are amongst the latter. I am particularly struck by the fact that all the speakers discuss the objective merits and demerits of the proposals and are not guided, as in other countries, by considerations of party politics. . . ."

### Representative Cantons

As regards the cantons which have representative institutions, each one of them provides for compulsory constitutional referendum, constitutional initiative and popular initiative in the case of ordinary legislation. There is also provision for referendum in the case of ordinary legislation, but in some cantons it is optional while in others it is compulsory.



Every canton has a unicameral legislature which is elected by the people for a term of three or four years. In some cantons, there is the system of proportional representation. The basis of representation is very low and varies from 350 to 500 citizens in various cantons. It is not considered necessary to have a second chamber on account of the institutions of referendum and initiative. The legislature of a canton is known as the Grand Council or the Cantonal Council.

The Executive of a Canton is vested in a board or commission of five to seven members. It is known by the name of Administrative Council, Small Council or Council of State. In the case of the Cantons of Zug and Ticino the executive is elected on the basis of proportional representation. In many other cantons, it is elected by the people by an ordinary vote. In the case of the cantons of Valais and Fribourg, the executive is elected by the legislature of the canton. The executive of every canton has a President and a Vice-President. Its powers and duties are similar to those of the Federal Council. It is a servant of the Grand Council. According to Brooks, "As in the case of the Federal Council, the Executive Council of a canton acts as a Board upon all matters of importance." It is to be observed that the members of the Administrative Council, Small Council or Council of State take part in the debates of the Grand Council. They also propose measures and draft bills when required to do so. They are not bound to resign even if their measures are rejected by the Grand Council. They are re-elected many a time. Their knowledge and experience entitles them to exercise a lot of influence on the Grand Council.

There are three kinds of courts in the cantons and those are the Justices of the Peace, Courts of First Instance and Court of Appeal. The judges are either elected by the people directly or they are elected by the Grand Council. In no canton are the judges nominated by the executive. The people choose them for their learning and nobility of character and not on account of their party affiliation. It is true that the term of office of a judge is short (three or four years), but their position is made safe by the practice of re-electing them again and again. The Justices of the Peace are the lowest courts in the cantons. Above them are the District Courts and at the top of them are the High Courts. The use of the procedure of arbitration is popular for the disposal of cases. In many cases, lay assessors are associated with the judges. In some cantons, justice is given free to the people and nothing is charged from the litigant.

### Communes

Communes are the units of political life of the people of Switzerland. There are about 3,118 Communes in Switzerland and they vary not only in population but also in area. There is a democratic form of government in all the Communes. In the case of small Communes, the popular assemblies of citizens control their affairs. In the case of bigger Communes, they have representative institutions. The Communal Council transacts all public business

on behalf of the people of the Communes. The Communes are concerned with such functions and duties as education, police, water supply, poor relief, etc. It is pointed out that in 1937 the income of all the Communes from taxes was half of the receipts of the federal government and equal to the income of the cantons from taxes.

### Districts

A district stands in between the Canton and the Commune. It is merely an administrative unit. The Chief District official is elected by the people. He is the connecting link between Cantons and the Communes and he carries out his duties with the help of his subordinates.

According to Lord Bryce, the system of Local Government in Switzerland is important not only from the administrative point of view, but also "because of the training which the people have received, for practice in it has been a chief cause of their success in working republican institution. Nowhere in Europe has it been so fully left in the hands of the people. The Swiss themselves lay stress upon it, as a means of educating the citizens in public work, as instilling the sense of civic duty, and as enabling governmental action to be used for the benefit of the community without either sacrificing local initiative or making the action of the central authority too strong and too pervasive."

Reference may be made to the system of education in the cantons. The study of civics is compulsory in all the cantons and it is pointed out that this results in turning out good citizens for the country. Education is essentially practical in character. There are agricultural schools, commercial schools and vocational schools "which prepare young men and women for the federal posts, telegraphs, telephone, and customs services." A lot of attention is devoted to the provision of baths for students, the supervision of sports and hikes in various parts of the country, vacation colonies, milk cures and school lunches. A lot of money is given by the federal government in the form of grants to the cantons with a view to enable them to perform their duties successfully. A lot of attention is devoted to agriculture, industry and commerce. The same is the case with the military training of the youth of Switzerland.

### SUGGESTED READINGS

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|----------------------------|---|
| <i>Bonjour, F.</i>         | : Real Democracy in Operation (1920).                 |
| <i>Brooks, L. C.</i>       | : Government and Politics of Switzerland.             |
| <i>Bryce, J.</i>           | : Modern Democracies.                                 |
| <i>Buell</i>               | : Democratic Government in Europe.                    |
| <i>Ghosh, R. C.</i>        | : The Government of the Swiss Republic; 1953.         |
| <i>Huber, Hars</i>         | : How Switzerland is Governed?                        |
| <i>Hughes, Christopher</i> | : The Federal Constitution of Switzerland (1954).     |
| <i>Lloyd and Hobson</i>    | : The Swiss Democracy.                                |
| <i>Lowell, A. L.</i>       | : Government and Parties of Continental Europe, 1918. |
| <i>Rappard, W. E.</i>      | : The Government of Switzerland (1936).               |
| <i>Vincent, J. M.</i>      | : Government in Switzerland (1900).                   |



# THE SOVIET CONSTITUTION

## CHAPTER 17

### CHARACTERISTICS OF THE CONSTITUTION

#### Introductory

For centuries, the people of Russia remained under the autocratic rule of the Czars who styled themselves as "Autocrats of all the Russians." In spite of the nationalist and liberal movements in Europe during the 19th century, Russia continued to be citadel of reaction. Its people were backward and they had no voice in the administration of their country. In spite of the glories of Peter, the Great, and Catherine, the Great, the lot of the people of Russia did not improve at all. The liberalism of Alexander I was of no avail to his subjects. Nicholas I was the very reincarnation of reaction in Europe. It is true that the serfs were liberated in 1860's during the reign of Alexander II and a few minor reforms were introduced in certain other spheres, but the spirit of the Russian Government remained unchanged. No wonder, Alexander II was blown to pieces by a bomb in 1881. At this time, the Industrial Revolution started in the country but not much was achieved in the reign of Alexander III. The things took a serious turn in the reign of Nicholas II. In the Russo-Japanese War of 1904-5, Russia was defeated and that brought discredit to the Russian autocrats. In 1905-6, there took place a sort of a revolution in Russia and the Czar was forced to make concessions and set up a kind of constitutional government. The Duma was called and high hopes were raised, but reaction set in once again. New Dumas were elected but they were sent home very soon as the Czar was not prepared to part with power. There was resentment all round. Revolutionary societies were working both inside and outside Russia to overthrow the Czarist regime.

It was in these circumstances that the World War I broke out in 1914. Russia took up the cause of Serbia against Austria who was backed by Germany. Russia was backed by France and Great Britain also joined them. The war was not popular in Russia. The sufferings of the people multiplied while the officials and the army seemed to have the best of time. The crisis came in 1917 when the Czarist regime was overthrown and Bolsheviks under the leadership of Lenin came to power. There was a wholesale massacre of all those who had sided with the old regime and attempts were made to re-build the social and political system of the country on Communist lines.

#### Constitution of 1918

The Central Executive Committee of the Communist Party



appointed a committee to draft a Constitution for the people of Russia and the draft was approved of by the Fifth All-Russia Congress of Soviets. This Constitution was to apply to the Russian Socialist Federated Soviet Republic (RSFSR) and not to the Soviet Union which came into existence later on in 1922. The Constitution of 1918 came into force in July, 1918. The declared object of the new Constitution was to establish the dictatorship of the proletariat and uproot the exploiters. No wonder, capitalists, clergymen, members of the imperial dynasty, Kulaks, persons living on unearned incomes and certain categories of officials of the old Czarist regime were not given the right of vote. The Church was separated from the State and no religious instruction was to be allowed in the schools. Provision was made for an *All-Russian Congress of Soviets*. Representatives to this body were to come both from the urban and rural areas but more representation was given to urban areas as the Communists had greater hold over the cities than on the countryside. The All-Russian Congress of Soviets was to elect the Central Executive Committee which was to act in its place during the recess period. Provision was also made for a Council of People's Commissars which was responsible to the All-Russian Congress of Soviets and the Central Executive Committee at different times.

### Constitution of 1924

In 1922, the Union of Soviet Socialist Republic (U.S.S.R.) came into being. The Union consisted of four States. In July, 1923, the Central executive Committee drafted a new Constitution for the U.S.S.R. which came into force in January, 1924. Provision was made for the division of powers between the Federal Government and the Units. While certain specific powers were given to the Federal Government the residuary powers were left with the units. Provision was made again for an All-Union Congress of Soviets in which once again weightage was given to the people living in the urban areas. Once again, the capitalists, clergymen, criminals and certain categories of officials of the Czarist regime were not allowed the right to vote. The Central Executive Committee was to have two Houses, viz., Union of Soviets and Soviet of Nationalities. The Union of Soviets represented the people and its members were elected by the people on a population basis. The Soviet of Nationalities was a House of the Units of the Federation. The size of the Union of Soviets was much bigger than that of the Soviet of Nationalities. Provision was also made for the Presidium consisting of 27 members. Nine of these members were to be elected by the Union of Soviets, nine by the Soviet of Nationalities and nine by the Union of Soviets and the Soviet of Nationalities sitting together. The Central Executive Committee was also to appoint the Council of People's Commissars whose members were to be the heads of the various departments of the Federal Government. Lenin was the first Chairman of the Council of People's Commissars. This Constitution lasted up to 1936.



## The Constitution of 1936

There were certain factors which were responsible for the decision of the Seventh Congress of the Soviets of the U.S.S.R. to amend 'the Constitution of Soviet Russia.' As a result of the execution of the First and Second Five-Year Plans, capitalism was completely liquidated from the country. The class distinctions were also eliminated. To quote Stalin, "The most important thing is that capitalism has been banished entirely from the sphere of our industry, while the socialist form of production now holds undivided sway in the sphere of our industry. In the sphere of agriculture, instead of the ocean of small individual peasant-farms, with their poor technical equipment and a strong Kulak influence, we now have mechanised production conducted on a scale larger than anywhere else in the world, with up-to-date technical equipment, in the form of all-embracing system of collective farms and state farms. As for the country's trade, the merchants and profiteers have been banished entirely from this sphere. All trade is now under the influence of the State, the co-operative societies and collective farms. The landlord class has already been eliminated. The capitalist class in the sphere of industry has ceased to exist. The Kulak class in the sphere of agriculture has ceased to exist. And the merchants and profiteers in the sphere of trade have ceased to exist. Thus all the exploiting classes have now been eliminated. There remains the working class. There remains the peasant class. There remains the intelligentsia." A new Constitution was considered necessary for the changed circumstances in the country.

On 6th February, 1935, the following decisions were taken by the Seventh Congress of Soviets of the U.S.S.R.:—

"1. To amend the Constitution of the Union of Soviet Socialist Republics in the direction of—

"(a) further democratising the electoral system of replacing not entirely equal suffrage, indirect elections by direct election and the open ballot by the secret ballot;

"(b) giving more precise definition to the social and economic basis of the Constitution by bringing the Constitution into conformity with the present relation of class forces in the U.S.S.R.

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1. According to Vyshinsky, the year 1936 was a milestone in Soviet constitutional history. The draft Constitution was heralded as a reflection of the changed economic and social conditions which had resulted from the industrialisation of the country under the Five-Year Plan and the collectivisation of agriculture. The year 1936 was accepted as a date for which many had been waiting. It marked the end of many of the controls established by the resolution to make certain that no combination of forces would arise which could threaten seriously the continued existence of the Soviet Government and the political and economic systems for which it had become known. Whole classes of population had previously been discriminated against in legislation relating to education, military service and even the obtaining of employment. The 1936 Constitution changed all this by eliminating discrimination on the ground of social origin or occupation. To many, an age of greater tolerance seemed to be drawing, (*The Law of the Soviet State*, Introduction.)

(the creation of a new Socialist industry, the demolition of the Kulak class, the victory of the collective farm system, the consolidation of Socialist property as the basis of Soviet society, and so on).

"(2) To join the Central Executive Committee of the Union Soviet Socialist Republics to elect a Constitution Commission which shall be instructed to draw up an amended text of the Constitution in accordance with the principles indicated in Clause 1 and to submit it for approval to a session of the Central Executive Committee of the Union of Soviet Socialist Republics.

"(3) To conduct the next ordinary elections of the organs of Soviet Government in the Union of Soviet Socialist Republics on the basis of the new electoral system."

A drafting committee of 31 members with Stalin as Chairman was appointed to prepare a draft of the new Constitution of the U.S.S.R. 60 million copies of the draft were printed so that the people may have an idea of the nature of the Constitution to be adopted in the country. Lakhs of meetings were arranged to discuss the draft Constitution and no wonder more than 150,000 amendments were proposed to the draft Constitution. An extraordinary session of the Congress of Soviets of the U.S.S.R. unanimously approved of the text of the Constitution on 5th December, 1936. It is stated the most of the alterations made in the draft Constitution were merely of textual nature and only seven of them were of any great importance. The new Constitution came into force in January, 1937.

### Characteristics of the Soviet Constitution

(1) The Soviet Constitution establishes a *federal form of government*. The Federation consists of the Union Republics, Autonomous Republics, Autonomous Regions, and National Areas. Article 13 of the Constitution provides that the U.S.S.R. is a Federal State, formed on the basis of a voluntary union of equal of Soviet Socialist Republics. There are 16 Union Republics and those are organized on the basis of nationality. Each Union Republic has a Constitution of its own and has the right to send 25 representatives to the Soviet of Nationalities which is the second Chamber in Soviet Russia. The Autonomous Republics exist within the territories of the Union Republics and have their own Constitutions. These Republics have been created with a view to satisfy the desire of the smaller national groups to have autonomy in their own affairs. There are in all 16 Autonomous Republics in Soviet Russia and each of them is entitled to send 11 representatives to the Soviet of Nationalities. The basis of Autonomous Regions is racial groups who have a distinctive culture of their own and are entitled to a measure of autonomy. There are in all 9 Autonomous Regions and each of them has the right to send 5 representatives to the Soviet of Nationalities. Ordinarily,

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1. 5th December, 1936—the day of the Constitution—was declared a public holiday and there were rejoicings on a large scale.



the National Areas are very small in size but each one of them has the right to send one representative to the Soviet of Nationalities

Article 18 provides that the territory of a Union Republic may not be altered without its consent but there is no similar guarantee for autonomous republics or lesser autonomous units. Five such units were dissolved during the Second World War, viz., the Crimean, Volga German, Chechen-Ingush and Kalmyk Republics and the Karachai region. In January 1957, the last three were restored to autonomy, though only one in its original form. Union Republics have lost territory, by consent or otherwise. A part of the Karelo-Finnish Republic was transferred to the R.S.F.S.R. in 1945. In 1956, the rest of the republic acceded to the R.S.F.S.R., thus extinguishing its union-republican status. In 1955, the R.S.F.S.R. ceded the Crimea to the Ukraine. In 1956, the Kazakh Republic ceded territory to the Uzbek. In 1957, Georgia ceded to the R.S.F.S.R. its part of the Chechen-Ingush territory.

As regards the *division of powers* between the federal government and the units, *Article 14 gives the following powers to the federal government:—*

(1) Representation of the U.S.S.R. in international relations, conclusion, ratification and denunciation of treaties of the U.S.S.R. with other States, establishment of general procedure governing the relations of Union Republics with foreign States;

(2) Questions of war and peace;

(3) Admission of new republic into the U.S.S.R.;

(4) Control over the observance of the Constitution of the U.S.S.R. and ensuring conformity of the Constitutions of the Union Republics with the Constitution of the U.S.S.R.;

(5) Confirmation of alterations of boundaries between Union Republics;

(6) Confirmation of the formation of new Territories and Regions and also of new Autonomous Republics and Autonomous Regions within Union Republics;

(7) Organization of the defence of the U.S.S.R., direction of all the Armed Forces of the U.S.S.R., determination of directing principles governing the organization of the military formation of the Union Republics;

(8) Foreign trade on the basis of the State monopoly,

(9) Safeguarding the security of the State;

(10) Determination of the national economic plans of the U.S.S.R.;

(11) Approval of the consolidated State budget of the U.S.S.R. and of the report on its fulfilment; determination of the taxes and revenues which go to the Union, the Republican and the local budgets;

(12) Administration of the banks, industrial and agricultural institutions and enterprises and trading enterprises of all-Union importance;

(13) Administration of transport and communications;

(14) Direction of the monetary and credit system;

(15) Organization of State insurance;

(16) Contracting and granting of loans;

(17) Determination of the basic principles of land tenure and of the use of mineral wealth, forests and waters;

(18) Determination of the basic principles in the spheres of education and public health;

(19) Organization of a uniform system of national economic statistics;

(20) Determination of the principles of labour legislation;

(21) Legislation concerning the judicial system and judicial procedure; criminal and civil codes;

(22) Legislation concerning Union citizenship; legislation concerning rights of foreigners;

(23) Determination of the principles of legislation concerning marriage and the family; and

(24) Issuing of all-Union acts of amnesty.

### Special Features

It is to be observed that there are certain special features of the Soviet federal system. The various units of the Federal Government represent various nationalities. According to Article 17, every Union Republic has the right to leave the U.S.S.R. Such a right does not exist in other federal Constitutions, e.g., the U.S.A. and India. It is also provided that each Union Republic has the right to enter into direct relations with foreign States and conclude agreements with them. Each Union Republic has its own Republican Military formations. It is on account of the existence of these Articles that Ukraine and White Russia were accepted as independent members of the United Nations.

The Sixth Session of the Supreme Soviet of the U.S.S.R. took many decisions which added to the sovereignty of the Union Republics. A law was adopted which transferred to the Union Republics the responsibility for legislation on the judicial system and judicial procedure of the Union Republics, the adoption of civil and criminal procedural codes and the independent handling of questions of regional and territorial administration and territorial structure. The reorganization of management in industry and construction which was carried out in 1957, and the setting up of economic regions meant a further extension of the rights of the Union Republics.



Critics point out that the independence of the Union Republics is not a real one. The Federal Government has the power to control them in every possible way. Article 14 of the Constitution gives the Federal Government the power to establish "general procedure governing the relations of Union Republics with Foreign States" and also to lay down the "directing principles governing the organization of the military formation of the Union Republics." The stranglehold of the Federal Government is so strong that no unit can dare to declare itself independent. Anything can be done behind the iron curtain to curb the rebellious tendencies of any unit. Article 20 of the Constitution also provides that in the event of a divergence between a law of the Union Republic and the law of the Soviet Union, the Union law shall prevail. The control of the Federal Government over the units in the economic field is all-comprehensive. Practically everything is to be controlled from the centre. Foreign trade, transport and communication, banks, agriculture, industries, monetary system, State insurance, etc., have all to be controlled from the centre. There is hardly any country in the world which gives so much of control to the Federal Government in the economic sphere. The Units in Soviet Russia are helpless in the matter of the amendment of the Constitution. Article 146 specifically provides that the Constitution can be amended by the Supreme Soviet of the U.S.S.R. by a two-thirds majority of both the Houses. The units of the federation do not figure anywhere. Their power can be taken away by the Federal Government without their consent. The one-party State of Soviet Russia enables the Communist Party to control both the Federal Government and the Units. The question of actual autonomy does not arise and all opposition can be crushed with a strong hand.

It goes without saying that Soviet Russia has a federal system in which the Federal Government is very strong and the so-called autonomy of the Units is not a real one. The Federal Government can do whatever it pleases. The whole administrative system is unified. The Council of Ministers of the U.S.S.R. can violate the so-called sovereignty of the Union Republics. According to Professor Wheare, *the Soviet Constitution set up a "quasi-federal" system and the same is not "a working example of federal Government."*

(2) *Democratic Centralism.* Another characteristic of the Constitution is the principle of *Democratic Centralism*. This is the guiding principle of the State and party organization. It is pointed out that the Soviet political system gives the largest measure of democratic freedom to the people of the country. The Constitution provides for universal franchise and secret voting. According to Article 135, all citizens of the U.S.S.R. who have reached the age of 18, irrespective of race and nationality, sex, religion, education, domicile, social origin, property status or past activities, have the right to vote in the election of deputies with the exception of insane persons and persons who have been convicted by a court of law and whose sentences include deprivation



of electoral rights. Likewise, every citizen of the U.S.S.R. who has reached the age of 23 is eligible for election to the Supreme Soviet of U.S.S.R. irrespective of race or nationality, sex, religion, education, domicile, social origin, property status or past activities. Every citizen has one vote and all citizens participate in elections on an equal footing. Women have the right to elect and be elected on equal terms with men. Citizens serving in the armed forces of the country have the right to elect and be elected on an equal term with all other citizens. All Soviets of Working People's Deputies, from a rural and city Soviet of Working People's Deputies to the Supreme Soviet of the U.S.S.R., are elected by citizens by direct vote. Candidates are nominated by election districts. The right to nominate candidates is secured to public organizations, trade unions, co-operatives, youth organizations and cultural societies. "It is the duty of every deputy to report to his electors on his work and on the work of his Soviet Working People's Deputies and he may be recalled' at any time upon the decision of a majority of the electors in the manner established by law." (Article 142).

It is clear from above that theoretically the people of the U.S.S.R. have a thorough-going democracy. They have the right to take part in all kinds of elections and experience shows that more than 90% of the people vote at the time of elections. The people of Russia also enjoy what may be called freedom from economic insecurity. There is no unemployment and everybody is guaranteed the right to work and wages according to the quality and quantity of his work.

In spite of all this, it is pointed out that there is no democracy in the U.S.S.R. in the real sense of the term. That is partly due to the fact that everything in U.S.S.R. is controlled by the Communist Party. Even when elections<sup>2</sup> are held no person who does not belong to the Communist Party is allowed to stand for election. No other political party except the Communist Party is allowed to exist in the country. The choice of the candidates is made by the Communist Party and there is only one candidate in the field at the time of elections. All that the voters can do is to cast their votes in favour of the only candidate in the field. In other countries, in such circumstances, the candidate would be declared to be returned unopposed without going through the formalities of an election. Critics point out that elections in the U.S.S.R. are merely a farce because there are no rival candidates opposing each other or one

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1. According to Article 142 of the Soviet Constitution, "It is the duty of every deputy to report to his electors on his work and on the work of his Soviet Working People's Deputies, and he may be recalled at any time upon decision of a majority of the electors in the manner established by law."

2. Elections in Soviet Russia are a kind of "command-post exercises" for the cadres of the Communist Party which have an opportunity to show their organisation and agitatorial skill. According to Vyshinsky, "The Soviet election system is a mighty instrument for further educating and organising the masses politically, for further strengthening the bond between the State mechanism and the masses, and for improving the State mechanism and grubbing out the remnants of bureaucratism."



another. It is the Communist Party which dominates and controls all the elections and consequently democracy is merely a sham. The citizens of the U.S.S.R. are merely given the right to participate in elections, but they do not have control over elections as those are controlled by the Communist Party. Any person who opposes the Communist Party is bound to be eliminated. All trade unions, youth organizations, consumers' co-operatives and other organizations are guided and controlled by the Communist Party. There is no freedom of speech and expression except for those who speak and write in accordance with the views of the Communist Party. The State controls the entire educational system of the country and thereby tries to put the Communist ideas into the minds of all men and women. The press, radio, and cinema are also used for a similar purpose. Even the orthodox Church of Russia has been turned into an instrument of State policy. The Communists claim that Soviet Russia is "a million times more democratic than the most democratic bourgeois republic." The reply of the critics is that if the Russian pattern of democracy can be called perfect democracy, one should not have any hesitation in quoting Burke that "a perfect democracy is the most shameless thing on earth."

According to Merle Fainshold, "The Soviet regime has demonstrated great skill in using the trappings of mass democracy to mask the entrenched position of the dictatorial elite which dominates Soviet society. Constitutional myths and symbols have been ingeniously adopted to contribute to the illusion of mass participation and mass control. But the actual configurations of power in the Soviet system are difficult to conceal. The political realities of Soviet life speak the unmistakable language of a one-party dictatorship, in which ultimate power is deposited in a narrow ruling group." (*How Russia is Governed*, page 326.)

According to Dr. Andrews, "In any case, we are entitled to ask if the appearance that the Soviet Constitution adheres to Western forms is correct and if, therefore, the arbitrariness of Soviet practice violates its own Constitution. A careful reading of the Constitution in the light of Marxian theory indicates that this is not the case. Although the Constitution contains numerous provisions that seem to establish norms of power limitation and procedural regularity in the Western tradition, it also contains Marxian 'escape clauses.'" (*Constitutions and Constitutionalism*, p. 152.)

However, according to President Voroshilov, every material guarantee of democracy exists for the Soviet people. Allegations that Soviet democracy is limited, are untrue "not only because the election of Soviet deputies proceeds in a most democratic way, but also because deputies include non-Communists. Of the local Soviet deputies recently elected, 55% were non-Communists and almost 100% of all the voters went to the polls. This proves that Soviet democracy is a genuine people's democracy."

The principle of democratic centralism implies not only demo-



cracy but also centralization. This is achieved by the fact that the Central Government has been given a large measure of control over the activities of the Union Republics. Moreover, the Communist Party controls the affairs of both the Central Government and the Union Republics. There is nothing that escapes the control of the Communist Party.

The principle of democratic centralism is also embodied in the party rules of the Communist Party. That involves the application of the elective principle to all leading committees of the party, the periodical accountability of these committees to their respective party organizations, strict party subordination of the minority to the majority and the absolutely binding character of the decisions of the higher bodies upon the lower bodies. While the principle of centralism in the party organization is not disputed, it is pointed out that there is hardly any democracy in the working of party organization. It is the views of the leaders that have to be carried out and the rank and file of the party do not have any hand in the shaping of the policy and programme of the party. Party discipline is so strict that those who show the least signs of independence, are likely to be dismissed and even executed as traitors. The introduction of direct elections and secret voting have not resulted in any practical change in the state of affairs.

It follows from above that the principle of democratic centralism does not embody as much of democracy as it does of centralism. However, there is a certain amount of freedom in routine affairs of a strictly local character.

(3) The social structure in the U.S.S.R. is described in Chapter I of the Constitution. According to it, the U.S.S.R. is a socialist state of workers and peasants. The political foundation of the U.S.S.R. is the Soviets of Working People's Deputies, which grew and became strong as a result of the overflow of the power of the landlords and capitalists and the establishment of the dictatorship of the proletariat. All power in the U.S.S.R. belongs to the working people of towns and country-side as represented by the Soviets of Working People's Deputies. The economic foundation of the U.S.S.R. is the socialist system of economy and the socialist ownership of the instruments and means of production, firmly established as a result of the liquidation of the capitalist system of economy, the abolition of private ownership of the instruments and means of production, and the elimination of the exploitation of man by man. Socialist property in the U.S.S.R. exists either in the form of State property (belonging to the whole people) or in the form of co-operative and collective-farm property (property of collective farms, property of co-operative societies). The land, its mineral wealth, waters, forests, mills, factories, mines, rail, water and air-transport, banks, communications, large State-organized agricultural enterprises (state farms, machine and tractor stations and the like), as well as municipal enterprises and the bulk of the dwelling houses in the cities and industrial localities, are State property, that is, belong to the



whole people. The common enterprises of collective farms and co-operative organizations, with their livestock and implements, the products of the collective farms and co-operative organizations, as well as their common buildings, constitute the common, socialist property of the collective farms and co-operative organizations. Every household in a collective farm, in addition to its basic income from the common, collective-farm enterprise has for its personal use a small plot of household land and, at its personal property, a subsidiary husbandry on the plot, a dwelling house, livestock, poultry and minor agricultural implements. The land occupied by collective farms is secured to them for their use free of charge and for an unlimited time, that is, in perpetuity. Alongside the socialist system of economy which is the predominant form of economy in the U.S.S.R., the law permits the small private economy of individual peasants and handicraftsmen based on their own labour and precluding the exploitation of the labour of others. The personal property right of citizens in their incomes and savings from work, in their dwelling houses and subsidiary home enterprises, in articles of domestic economy and use and articles of personal use and convenience, as well as the right of citizens to inherit personal property is protected by law. The economic life of the U.S.S.R. is determined and directed by the state national economic plan, with the aim of increasing the public wealth, of steadily raising the material and cultural standards of working people, of consolidating the independence of the U.S.S.R. and strengthening its defensive capacity. Work in the U.S.S.R. is a duty and a matter of honour for every able-bodied citizen, in accordance with the principle: "He who does not work, neither shall he eat." The principle applied in the U.S.S.R. is that of Socialism: "From each according to his ability, to each according to his work."

(4) *Fundamental Rights and Duties.* Another characteristic of the Soviet Constitution is that it provides for certain fundamental rights and duties of citizens. Articles 118 to 133 deal with this important matter.

### **Fundamental Rights**

(a) It is provided that the citizens of U.S.S.R. have the right to work, that is, the right to guaranteed employment and payment for their work in accordance with its quality and quantity. The right to work is ensured by the socialist organisation of the national economy, the steady growth of the productive forces of Soviet society, the elimination of the possibility of economic crises, and the abolition of unemployment. It is to be observed that all the workers are not entitled to equal wages. Their wages are to depend upon the quality and quantity of their work. A certain class of workers, known as Stakhanovists, are given exceptionally high wages and that is why Trotsky wrote thus, "The real earnings of Stakhanovists often exceed by twenty or thirty times the earnings of the lower categories of workers. And as for especially fortunate specialists, their salaries would in many cases pay for the work of eighty or hundred unskilled labourers."



In scope of inequality in the payment of labour, the Soviet Union has not only caught up to, but far surpasses the capitalist countries." (*The Revolution Betrayed*.)

(b) The citizens of the U.S.S.R. have the right to rest and leisure. The right to rest and leisure is ensured by the establishment of an eight-hour day for factory and office workers, the reduction of the working day to seven or six hours for arduous trades and to four hours in shops where conditions of work are particularly arduous, by the institution of annual vacations with full pay for factory and office workers, and by the provision of a wide network of sanatoria, rest homes and clubs for the accommodation of the working people."

(c) Citizens of the U.S.S.R. have the right to maintenance in old age and also in case of sickness or disability. This right is ensured by the extensive development of social insurance of factory and office workers at State expense, free medical service for the working people, and the provision of a wide network of health resorts for the use of the working people.

(d) Citizens of U.S.S.R. have the right to education. This right is ensured by universal and compulsory elementary education, by free education up to and including the seventh grade, by a system of State stipends for students of higher educational establishments who excel in their studies, by instruction in schools being conducted in the native language, and by the organization in the factories, State farms, machine and tractor stations, and collective farms of free vocational, technical and agronomic training for the working people. It is to be observed that originally the Constitution provided that education in all stages was to be free within the U.S.S.R. In 1940, tuition fees were introduced in high schools and colleges. In 1947, free education was restricted only up to the seventh class. Originally, the Constitution provided for "a system of State stipends for the overwhelming majority of students in the universities and colleges." However, an amendment of 1947 provided that stipends were to be given only to those students who excelled in their studies. (The result of the educational policy of the U.S.S.R. is that more than 80% of the people of that country are literates.)

(e) Women in the U.S.S.R. are accorded equal rights with men in all spheres of economic, cultural, political and other public activities. The possibility of exercising these rights is ensured by women being accorded an equal right with men to work, payment for work, rest, and leisure, social insurance and education, and State protection of the interests of mother and child, State aid to mothers of large families and unmarried women, maternity leave with full pay, and the provision of a wide network of maternity homes, nurseries and kindergartens.

(f) Equality of rights of citizens of U.S.S.R. irrespective of their nationality or race, in all spheres of economic, government, cultural, political and other public activity, is an indefeasible law. Any direct or indirect restriction of the rights of or, conversely,



the establishment of any direct or indirect privileges for citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law.

(g) In order to ensure to citizens freedom of conscience, the church in the U.S.S.R. is separated from the State, and the school from the church. Freedom of religious worship and freedom of anti-religious propaganda is recognized for all citizens. It is to be observed that the Constitution does not guarantee the right of religious propaganda although it guarantees propaganda against religion. Thus, the State is not completely neutral in religious matters. However, the relations between the State and church are better now than they were before. At the beginning, there was a total war against the church on account of its association with the Czarist regime. In 1925 was formed the League of Militant Atheists. However, the League was dissolved later on. In 1943, the office of the Patriarch, who was the head of the Orthodox Church, was revived. Instead of fighting against the church, efforts are being made to utilize the church to strengthen the Communist Party and its leaders.

(h) In conformity with the interests of the working people, and in order to strengthen the socialist system, the citizens of the U.S.S.R. are guaranteed by law freedom of speech, freedom of press, freedom of assembly (including the holding of mass meetings), and freedom of street processions and demonstrations. These civil rights are ensured by placing at the disposal of the working people and their organizations, printing presses, stocks of paper, public buildings, communication facilities and other material requisites for the exercise of these rights. Critics point out that the freedom of speech and expression is not real in the U.S.S.R. as everything is controlled by the Communist Party and there is no place for those who have the misfortune to differ from the official view. There is regimentation of thought and all means of propaganda are employed to achieve the object in view. Vyshinsky defends the existing state of affairs in the U.S.S.R. in these words: "In our State, naturally, there is and can be no place for freedom of speech, press and so on for the foes of socialism. Every sort of attempt on their part to utilize to the detriment of the State, that is to say, to the detriment of all the toilers these freedoms guaranteed to the toilers, must be classified as counter-revolutionary crimes." The following two quotations point out the nature of freedom of speech, press and assembly enjoyed by the people of the U.S.S.R. The *Pravda* once wrote thus: "The cowardly bourgeois, Menshevist and counter-revolutionary press has been exterminated for ever in our Soviet country. Whoever aims at overthrowing the socialist regime and damaging the socialist property of the people is an enemy of the people. He will never receive so much as a scrap of paper in the Soviet Union or be able to cross the threshold of a single printing work in pursuit of his fell designs. He will never find a hall, a room or a corner in which to disseminate his poisonous doctrines."



Likewise, the *Izvestia* wrote thus: "We can have no meetings of fools; and we can certainly have no meetings of criminals, monarchists, Menshevists, social-revolutionaries and the like." The fate of Beria who was executed after the death of Stalin during the regime of Malenkov, clearly points out to the fate of those who dare to differ from the group in power. In 1937, the Minister of the Interior had been executed to make way for Beria.

(i) In conformity with the interests of the working people and in order to develop the organizational initiative and political activity of the masses, citizens of the U.S.S.R. are guaranteed the right to unite in public organizations: trade unions, co-operative societies, youth organizations, sports organisations, defence organizations, and cultural, technical and scientific societies. The most active and politically conscious citizens in the ranks of the working class and other sections of the working people unite in the Communist Party of the U.S.S.R. which is the vanguard of the working people in their struggle to strengthen and develop the socialist system and also the leading core of all organizations of the working people, both public and State. A critical analysis of this provision in the Constitution shows that the people do not enjoy the right to form political organizations other than the Communist Party. Vyshinsky and Stalin have justified the exclusion of other political parties in forceful terms. According to Vyshinsky, "The Soviet Union in guaranteeing freedom to citizens, starts from the interests of the toilers and naturally does not include freedom of political parties in the enumeration of these freedoms guaranteed, inasmuch as this freedom, in the conditions prevailing in the U.S.S.R., where the toilers have complete faith in the Communist Party, is necessary only for agents of fascism and foreign reconnaissance whose purpose is to take all freedoms away from the toilers of the U.S.S.R., and to put the yoke of capitalism upon them once more. The victory of socialism, the liquidation of the exploited classes in the land, has finally removed the ground upon which new parties could emerge independently of the all union Communist Party." (*Law of the Soviet State*.) According to Stalin, "A party is a part of class, its most advanced part. Several parties, of accordingly, freedom for parties as well can exist only in a society where there are antagonistic classes with hostile and irreconcilable interests, where there are, let us say, capitalists and workers, land-owners and peasants, kulaks and the poorest peasantry. (In the U.S.S.R., however, there are no longer such classes as capitalists, land-owners, kulaks and the like.) There are only two classes, workers and peasants, and their interests are not only not hostile, they are on the contrary amicable. Accordingly, there is in the U.S.S.R. no ground for the existence of several parties, and so none for freedom for these parties either. In the U.S.S.R., there is ground for one party only—the Communist Party, and in the U.S.S.R. only one party can exist—the Communist Party, boldly defending to the end the interests of workers and peasants."

(j) Citizens of the U.S.S.R. are guaranteed inviolability of



their persons. No person can be placed under arrest except by a decision of a court or with the sanction of a procurator. The inviolability of the homes of citizens and privacy of correspondence are protected by law. Critics point out that these rights are absolutely unreal in the U.S.S.R. Any person can be arrested on mere suspicion and executed without any formal trial. Most of the persons who are punished are those who are accused of political offences. Their common lot is imprisonment, condemnation and forced labour camp, deportation or execution. A large number of them are sent to concentration camps. If these had any meaning, the jail population in the U.S.S.R. would not have been so much.

(k) The U.S.S.R. affords the right of asylum to foreign citizens persecuted for defending the interests of the working people or for scientific activities or for struggling for national liberation. It is ironically remarked that "Moscow is, indeed, the heaven of notable revolutionaries."

### Fundamental Duties

If the citizens of the U.S.S.R. have been guaranteed certain rights they are also required to perform certain duties. Those duties are necessary for the preservation of "the vital interests of the working people". (a) According to Article 130, it is the duty of every citizen to abide by the Constitution, to observe the laws, to maintain labour discipline, honestly to perform public duties, and to respect the rules of socialist intercourse. According to Karpinsky, "The Soviet Socialist State represents, expresses and defends the interests of the whole people, the interests of the Soviet State, of Soviet society and the interests of the people coincide. They are identical, inseparable emphasis is put on discipline among the workers. That is due to the fact that without such free, conscious discipline, socialist emulation aiming at the fulfilment and overfulfilment of production quotas in the shortest period of time would be impossible." Work is not only a duty but a matter of honour for all able-bodied persons in the U.S.S.R. The Constitution specifically lays down that "He who does not work, neither shall he eat."

(b) According to Article 131 it is the duty of every citizen of the U.S.S.R. to safeguard and fortify public, socialist property as the sacred and invaluable foundation of the Soviet system, as the source of the wealth and might of the country, as the source of the prosperity and culture of all working people. Persons committing offences against public or socialist property are the enemies of the people. Socialist property in the U.S.S.R. exists either in the form of State property or in the form of co-operative and collective farm property. The land, its mineral wealth, waters, forests, mills, factories, mines, rail, water and air transport, banks, communications, large State-organised cultural enterprises and the bulk of the dwelling houses in the cities and industrial localities are State property and belong to the whole people. The common enterprises of collective farms and co-operative orga-



nisations with their livestock and implements, the products of the collective farms and co-operative organisations, and their common buildings, constitute the common socialist property of the collective farms and co-operative organizations. According to Article 132, universal military service is law. Military service in the armed forces of the U.S.S.R. is an honourable duty of the citizens of the U.S.S.R.

(c) According to Article 133, to defend the country is a sacred duty of every citizen of the U.S.S.R. Treason to the Motherland—violation of the oath of allegiance, desertion to the enemy, impairing the military power of the State, espionage—is punishable with all the severity of the law as the most heinous of crimes. The importance of universal military service and the necessity of the defence of the country is emphasized in these words: "And indeed what duty can be more honourable than to defend with arms in hand our great Soviet country, the first socialist State of workers and peasants in the world, the hope, the bulwark of toiling humanity everywhere in the globe in its struggle for emancipation."

(5) The Constitution seems to set up a Cabinet form of government like that of England. The Council of Ministers of the U.S.S.R. is responsible and accountable to Supreme Soviet of the U.S.S.R. In the intervals between the sessions of the Supreme Soviet, it is responsible to the Presidium of the Supreme Soviet of the U.S.S.R. Likewise, there are Councils of Ministers for the various Union Republics who are also responsible and accountable to the Supreme Court of the Union Republics. The Supreme Soviet of the U.S.S.R. is endowed with full power to appoint investigating and auditing commissions. However, the dominant position occupied by the Communist Party in Soviet Russia reduces the parliamentary system to a farce. There is no Opposition party in the legislatures and consequently there is no criticism of the government. On the whole, it is the duty of the legislature to ratify the decisions arrived at by the Party.

(6) Another characteristic of the Constitution is the plural executive in the Presidium of the Supreme Soviet of the U.S.S.R. It consists of 33 members and resembles the King of England or the President of France. However, the real executive is the Council of Ministers of the U.S.S.R.

(7) There is some sort of recognition of the principle of separation of powers in the Constitution. The Constitutions of 1918 and 1924 concentrated all the legislative, executive and judicial powers and functions in the hands of the All-Union Congress of the Soviets and the agencies created by it. Under the new Constitution, the Legislative power is given exclusively to the Supreme Soviet of the U.S.S.R. The executive and administrative authority is given to the Council of Ministers and the judicial authority is given to the Supreme Court. However, the principle of separation of powers is infringed in so far as the Supreme Soviet of the U.S.S.R., appoints the Presidium of the Supreme



Soviet of the U.S.S.R., the Procurator-General and the members of the Supreme Court of the U.S.S.R. The dominant position of the Communist Party unites all the organs into an organic whole.

(8) Another characteristic of the Constitution is that it sets up a one-party State. The Constitution describes the Communist Party as "the vanguard of the working people in their struggle to strengthen and develop the socialist system." The Communist Party is "the leading core of all organizations of the working people, both public and State." According to Karpinsky, "Under the leadership of the Communist Party the Soviet people are marching onward to new achievements in consolidating the might of the Soviet State, completing the building of socialism and effecting the gradual transition to communism. Let us rally still more closely round the Soviet State, round the Communist Party, round our leader, friend and teacher, Comrade Stalin."

(9) Another distinctive feature of the Constitution is the position and functions of the courts in the U.S.S.R. These courts are the organs of the Soviet Socialist State of workers and peasants and their duty is "to fight the enemies of the Soviet Government, and secondly to fight for the consolidation of the new Soviet system to firmly anchor the new socialist discipline among the working people."

According to Stalin, the U.S.S.R. is "an entirely novel socialist State, unprecedented in history". Its novel features are that it is a socialist State. The socialist organisation of its economic life is the most important novel feature. The right to secede is granted by the Constitution to the units of the federation. The federal government is given the exclusive right to amend the Constitution by a two-thirds majority of the legislature and the units have no share in the amendment. There is a concentration of powers in the Supreme Soviet. It elects the executive and the judiciary and its laws are not subject to executive or judicial veto. The only appeal from it is by referendum to the people. The two chambers of the Supreme Soviet have equal powers. The composition and functions of the Presidium are unique. The U.S.S.R. is a one-party State.

### Comparisons

The Constitution of 1936 differs in some seemingly essential respects from the earlier Constitutions of 1918 and 1924. In the first place, the powers of the Federal Council were extended and made more comprehensive as is shown by the requirement that the Constitutions of the constituent and autonomous republics should conform to the federal Constitution and by the institution of federal controls over the alteration of internal administrative boundaries, the judiciary, security policy, civil and criminal courts, etc. Secondly, the new Constitution made some concessions to the principle of separation of powers by differentiating sharply between the functions of the legislature, the executive and the judiciary. According to Article 32, the legislative power

is exercised exclusively by the Supreme Soviet. Article 64 provides that the Council of Ministers is the highest executive and administrative organ. According to Article 112, judges are independent and subject only to the law. However, the actual practice is different from the letter of the Constitution. The independence of the judiciary is merely a fiction as the courts are always the tool of the ruling class. Most of the legislation comes not from the Supreme Soviet but from the Council of Ministers which frequently issues decrees jointly with the Central Committee of the Communist Party. Executive decrees have at times the force of constitutional amendments. In the third place, the new Constitution has a chapter on the Fundamental Rights of the people, but there was no such provision in the earlier Constitutions. Fourthly, the introduction of universal, equal and direct suffrage and secret ballot by the Constitution of 1936 has brought the Soviet system nearer the other systems of bourgeois countries. There was no such provision in the previous Constitutions.

### SUGGESTED READINGS

- |                          |  |
|--------------------------|--|
| <i>Carter and Others</i> | : Government of the Soviet Union, 1954.          |
| <i>Fainshold. M.</i>     | : How Russia is Ruled?                           |
| <i>Florinsky, M. T.</i>  | : Russia, A History and an Interpretation, 1953. |
| <i>Harper, S. N.</i>     | : The Government of the Soviet Union.            |
| <i>Hazard, J. H.</i>     | : The Soviet System of Government, 1957.         |
| <i>Karpinsky, V.</i>     | : The Social and State Structure of the U.S.S.R. |
| <i>Kirichinko, A. D.</i> | : Soviet State Law, 1960.                        |
| <i>Kulski, W. W.</i>     | : The Soviet Regime, 1954.                       |
| <i>Mikhailow, N.</i>     | : Sixteen Soviet Republics.                      |
| <i>Scott, D. J. R.</i>   | : Russian Political Institutions.                |
| <i>Strong, A. L.</i>     | : The New Soviet Constitution.                   |
| <i>Towster, J.</i>       | : Political Power in the U.S.S.R.                |
| <i>Vyshinsky, A. Y.</i>  | : The Law of the Soviet State.                   |



## CHAPTER 18

### THE SUPREME SOVIET OF THE U.S.S.R.

Articles 30 to 47 of the Soviet Constitution deal with the Supreme Soviet (Council) of the U.S.S.R. According to Article 30, it is the highest organ of State power in the U.S.S.R. and the legislative power of the U.S.S.R. and is exercised exclusively by it. It is housed in the fine building on the Moskva river.

#### Its Composition

The Supreme Soviet of the U.S.S.R. consists of two chambers, viz., the *Soviet of the Union* and the *Soviet of Nationalities*. The Soviet of the Union is elected by the citizens of the U.S.S.R. voting by election districts on the basis of one deputy for every 300,000 of the population. The Soviet of Nationalities is elected by the citizens of the U.S.S.R. voting by Union Republics, Autonomous Republics, Autonomous Regions and National Areas on the basis of 25 deputies from each Union Republic, 11 deputies from each Autonomous Republic, 5 deputies from each Autonomous Region and one deputy from each National Area. It reflects the interests of all the nationalities in the U.S.S.R. The Soviet State is a multi-national State and all the nationalities are given representation in the Soviet of Nationalities.

Both the chambers of the Supreme Soviet of the U.S.S.R. are elected for a term of four years. Both of them have equal powers to initiate legislation. A law is considered adopted if passed by both chambers of the Supreme Soviet by a simple majority vote in each chamber. In the event of disagreement between the two chambers, the question is referred for settlement to a Conciliation Commission formed by the chambers on a party basis. If the Conciliation Commission fails to arrive at an agreement or if its decision fails to satisfy one of the chambers, the question is considered for a second time by the chambers. Failing agreement between the two chambers, the Presidium of the Supreme Soviet of the U.S.S.R. dissolves the Supreme Soviet of the U.S.S.R. and orders new elections.

Laws passed by the Supreme Soviet of the U.S.S.R. are published in the languages of the Union Republics over the signatures of the President and Secretary of the Presidium of the Supreme Soviet of the U.S.S.R.

Sessions of the Soviet of the Union and the Soviet of Nationalities begin and terminate simultaneously. The Soviet of the Union elects a Chairman and four Vice-Chairmen. The Soviet of Nationalities also elects a Chairman and four Vice-Chairmen. The Chairmen of the two chambers preside over the sittings of their chambers and have charge of the conduct of their business and proceedings. Joint sittings of the two chambers are presided



over alternately by the Chairmen of the two chambers. Ordinarily, the sessions of the Supreme Soviet of the U.S.S.R. are convened by the Presidium of the Supreme Soviet of the U.S.S.R. twice a year. Extraordinary sessions are convened by the Presidium of the Supreme Soviet of U.S.S.R. at its discretion or on the demand of one of the Union Republics.

### **Powers of the Supreme Soviet**

According to Article 31 of the Constitution, the Supreme Soviet of the U.S.S.R. exercises all rights vested in the U.S.S.R. in accordance with Article 14 of the Constitution in so far as they do not come within the jurisdiction of the organs of the U.S.S.R. that are accountable to the Supreme Soviet of the U.S.S.R., *i.e.*, the Presidium of the Supreme Soviet of the U.S.S.R., the Council of Ministers of the U.S.S.R. and the Ministries of the U.S.S.R.

Article 14 of the Constitution gives the following powers to the Supreme Soviet of the U.S.S.R.:—

(1) Representation of the U.S.S.R. in international relations, conclusion, ratification and denunciation of treaties of the U.S.S.R. with other States, establishment of general procedure governing the relations of Union Republics with foreign states;

(2) Questions of war and peace;

(3) Admission of new republics into the U.S.S.R.;

(4) Control over the observance of the Constitution of the U.S.S.R. and ensuring conformity of the Constitutions of the Union Republics with the Constitution of the U.S.S.R.;

(5) Confirmation of alterations of boundaries between Union Republics;

(6) Confirmation of the formation of new Territories and Regions and also of new Autonomous Republics and Autonomous Regions within Union Republics;

(7) Organization of the defence of the U.S.S.R., direction of all the Armed Forces of the U.S.S.R., determination of directing principles governing the organization of the military formations of the Union Republics;

(8) Foreign trade on the basis of State monopoly;

(9) Safeguarding the security of the State;

(10) Determination of the national-economic plans of the U.S.S.R.;

(11) Approval of the consolidated state budget of the U.S.S.R. and of the report on its fulfilment; determination of the taxes and revenues which go to the Union, the Republican and the local budgets;

(12) Administration of the banks, industrial and agricultural institutions and enterprises and trading enterprises of all-Union importance;



- (13) Administration of transport and communications;
- (14) Direction of the monetary and credit system;
- (15) Organization of State insurance;
- (16) Contracting and granting of loans;
- (17) Determination of the basic principles of land tenure and of the use of mineral wealth, forests and waters;
- (18) Determination of the basic principles in the spheres of education and public health;
- (19) Organization of a uniform system of national-economic statistics;
- (20) Determination of the principles of labour legislation;
- (21) Legislation concerning the judicial system and judicial procedure; criminal and civil codes;
- (22) Legislation concerning Union citizenship; legislation concerning rights of foreigners;
- (23) Determination of the principles of legislation concerning marriage and the family;
- (24) Issuing of all-Union acts of amnesty.

Article 146 of the Constitution gives the power of amendment of the Constitution to the Supreme Soviet of the U.S.S.R. It is provided that the Constitution can be amended by the Supreme Soviet of the U.S.S.R. by a majority of not less than two-thirds of the votes in each of its chambers. It is within the province of the Supreme Soviet to see that the Constitution is being duly enforced. It has also to ensure that the Constitutions of the Union Republics and other units do not conflict with the Constitution.

The Supreme Soviet of the U.S.S.R. appoints the Council of Ministers. It elects the Presidium of the Supreme Soviet of the U.S.S.R. It elects the members of the Supreme Court of the U.S.S.R. It elects the Procurator-General who has a lot of control over the administration of justice.

It is to be observed that the structure of the Supreme Soviet of the U.S.S.R. "assures the fullest and most accurate expression of the interests of all the peoples of our country in the highest organ of State power." It "facilitates the consolidation of fraternal co-operation and strengthens the bonds of friendship between all the Soviet people." It professes to be the "barometer of the public opinion". An analysis of the elections of 1946 showed that 38 per cent of the deputies were manual workers, 26 per cent peasants and 36 per cent representing the intelligentsia. Four-fifths of the deputies are the nominees of the Communist Party and the rest of them are non-party men and sympathisers.

Another thing to be noticed is that even the Government servants and those working in the Armed Forces are allowed to be members of the legislature. It is stated that more than 300 officials were elected in the elections of 1937. Such a thing is



not allowed in the Indian Constitution. The American Constitution provides that "no person holding any office of profit under the United States can be a member of either House (of Congress) during his continuance in office." Both the chambers of the Supreme Soviet have equal powers, are elected for an equal term, meet simultaneously and are dissolved simultaneously. Both of them are elected directly by the people although one represents the people and the other various nationalities. Another thing to be noticed is that the sessions of the Supreme Soviet are very brief. Chambers meet twice a year for about a week or 10 days on each occasion. In all, they do not sit for more than 20 days in a year. This is probably due to the fact that the Supreme Soviet merely ratifies the bills which have already been approved of by the Communist Party. There is no opposition party in the legislature and consequently there is no criticism of the Government.

The members of the Supreme Soviet have been guaranteed certain privileges by the Constitution. No member can be arrested or prosecuted without the consent of the Supreme Soviet and when the Supreme Soviet is not in session, without the consent of the Presidium of the Supreme Soviet of the U.S.S.R. If the deputies have certain privileges, they have also their duties to perform. A deputy is "a servant of the people, its messenger in the Supreme Soviet." He must report back to his electors concerning his own work and that of the Supreme Soviet. He can be recalled by them at any time. It is the duty of a deputy to take part in the proceedings of the Supreme Soviet and also that of its commission. He can address inquiries to the Government or to a particular minister. The accepted Soviet view regarding the position of a deputy can be described in these words: "The deputy of the Supreme Soviet is not a professional politician, nor a professional legislator, but a man connected with Socialist production, with science, etc. The Soviet deputy is a trustee of a bloc of Communist and non-party people, a man of live experience and deed, a fighter for socialism. He does not 'fence' with brilliant speeches, but as a deputy he aims to incorporate all of his creative experience into the matter of making laws that would secure the further development and strengthening of socialism."

As regards the actual position of the Supreme Soviet of the U.S.S.R., reference may be made to the view of some great authorities. According to Ogg and Zink, "Judging from statements appearing in their press, the Russians themselves apparently are of the opinion that the Supreme Council (Soviet) qualifies as a deliberative body. However, many Western observers find it difficult to accept such an evaluation. With sessions covering only 10 days or sometimes less twice each year, it is obvious that the Council does not spend the time on introduction of bills, consideration by committees, debate, amendment and voting that is spent in the Congress of the United States and many other legislative bodies. Legislation in general is initiated in the Soviet Union by the Council of Ministers or the Communist Party or some other agency." (*Modern Foreign Governments*, p. 859.)



Again, "In the Western sense, the Supreme Council of the U.S.S.R. may not be a truly deliberative body—certainly it does not conform to the pattern of Western legislative bodies—but it should not be assumed that it does not exercise at least a reasonable amount of influence in the public affairs of the Soviet Union." (*Ibid.*, p. 860.) According to Julian Towster, "The Supreme Soviet constitutes a structural cross between the former Congress of Soviets and C.E.C." by combining in it the functions formerly performed by these two organs—amendment of the Constitution, adoption of the budget, approval of foreign policy reports, confirmation of interim decrees of other organs, and occasional passage of some specific laws—one rung was eliminated from the formal ladder of authority. Though theoretically the sole legislating organ in the Soviet pyramid, the Supreme Soviet, like its predecessors—large in composition and meeting for a brief period in the course of the year—has so far operated primarily as a ratifying and propagating body. Its chief purpose appears to be, periodically or as occasion demands, to lend the voice of approval of a representative assembly to governmental policy." (*Political Power in the U.S.S.R.*, pp. 262-63.)

### Committee System

Reference may be made to the Committee System in the U.S.S.R. The Credentials Committees are charged with the verification of the powers of the Deputies. On a report of the Credentials Committee the chambers decide either to recognise the powers of the Deputies or to cancel the election of one or another Deputy.

About 180 Deputies are the members of the Standing Committees of the Supreme Soviet. The Soviet of the Union has four committees and the Soviet of Nationalities five. These Standing Committees while possessing no legislative power do a lot of useful work between the sessions. They study in advance a lot. Thus, the legislative proposals committees of the Soviet of the Union and Soviet of Nationalities give their conclusions on the Bills submitted to the Supreme Soviet and draw up Bills on the instructions of the chamber or on their own initiative. The committees enlist in their work a wide range of specialists, scientists and workers in the respective fields and carefully study the proposals of citizens; while examining the Bill on pensions, the Committees not only analysed materials published in the press in the course of the country-wide discussion of the Bill by the people but also 12,000 letters received from the citizens and made important amendments in the Bill.

The Budget Committees examine the budget proposals submitted to the Supreme Soviet, report on the fulfilment of the budget, bills on financial and budgetary questions and the draft on national economic plans. They set up 10 to 12 sub-committees which analyse the separate items of the budget with the participa-

1. C.E.C. stands for Central Executive Committee.



tion of workers of State planning bodies, the Ministries of Finance and representatives of the Union Republic.

In 1957, the Soviet of Nationalities formed an economic committee in connection with the extension of the rights of the Union Republics. Its task is to improve national economic planning and to take into account the requirements of the Union Republics, to ensure a correct solution of the problems of economic and cultural development of the Republics in conformity with their economic and national distinctive features. On the initiative of the committee, the Supreme Soviet and the Government of the U.S.S.R. have already taken measures to expand the building of schools and hospitals in some Republics, extend higher education in the eastern areas of the country, to turn over all the State housing facilities to local Soviets and to improve radio and telephone communications in the Union Republics.

The Foreign Affairs Committees express their opinion on the bills pertaining to the foreign policy of the U.S.S.R., give their conclusions on international treaties and agreements of the Soviet Union submitted for ratification or denunciation to the Presidium of the U.S.S.R. Supreme Soviet. In recent years, these committees have drafted and the Supreme Soviet has approved important declarations and addresses of the Soviet Union to all the countries calling upon them to work for the maintenance and strengthening of peace in the world.

### **The Soviet Electoral System**

According to K. Gorshenin, the Soviet law does not require such qualifications as education, etc., from the voters. "In our country nearly 100 per cent of the voters take part in the elections and the deputies, as a rule, receive the overwhelming majority of the votes. Thus, in the 1954' elections to the U.S.S.R. Supreme Soviet 99.98 per cent of the voters took part....

"Our electoral law in practice ensures democratic elections. The compilations of the voters' lists, the setting up of election commissions, and the nomination of candidates takes place under the strict control of the public.

"In our country everything is done to enable each citizen to exercise his electoral right. Election wards are so organised as to enable people from the most remote villages to come to the polls on election day. The rules governing the elections envisage measures which ensure every voter the possibility of exercising his right wherever he may be: travelling in a train, away from home on business, in a sanatorium, etc.

"Strict observance of the electoral law throughout the U.S.S.R. is watched over and questions connected with holding the election are decided by the Central Election Commission, composed of representatives from the trade unions, co-operatives, Communist Party organisations, youth organisations, various cul-

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1. In the elections held in March 1958, 99.97% voters went to the polls.



tural, technical and scientific societies and other public organisations and societies of the working people, as well as of representatives from meetings of factory and office workers at their enterprises and institutions, from servicemen at their military units, peasants at their collective farms and villages, state farm workers and employees at their state farms.

"The constituency and ward election commissions are formed on a similarly wide social basis....

"The consistent democracy of the Soviet electoral system is evidenced also by the procedure of nominating candidates to the U.S.S.R. Supreme Soviet.

"The right to nominate is enjoyed by all public organisations and societies of the working people: Communist Party organisations, trade unions, co-operative organisations, youth organisations, cultural societies. The right to nominate deputies to the U.S.S.R. Supreme Soviet is enjoyed both by the central organs of the public organisations and societies of the working people and by their republican, territorial, regional and district bodies, as well as by general meetings of factory and office workers at their enterprises and institutions, servicemen at their military units, peasants at their collective farms and villages, state-farm workers and other employees at their state farms....

"In our country where the exploiting classes have been eliminated, where the working class, the collective-farm peasantry and the Soviet intelligentsia are bound by ties of common interest and inviolable friendship, where an unprecedented moral and political unity of the entire people has been achieved, there is no ground for the existence of any other party but the Communist Party.

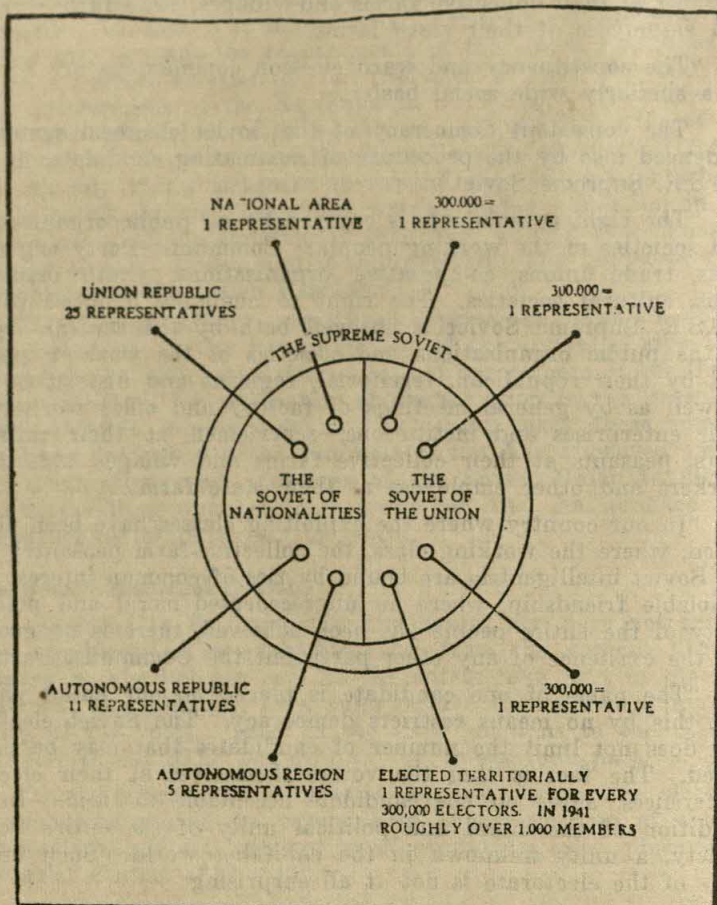
"The name of one candidate is placed on our ballot paper. But this by no means restricts democracy. The Soviet electoral law does not limit the number of candidates that may be nominated. The fact is that the voters themselves at their election conferences, agree on one candidate acceptable to them. In the condition of the moral and political unity of the entire Soviet society, a unity unknown in the capitalist world. Such unanimity of the electorate is not at all surprising.

"The nomination of candidates by several parties, which is publicised by the bourgeois propagandists as the supreme achievement of 'democracy', in practice boils down to that in the United States, for example, two bourgeois parties, the Republican and Democratic, have a monopoly of nominating candidates. The fight that sometimes flares up between these parties is not about basic political issues, but about secondary ones, and is frequently reduced to dividing up lucrative government jobs.

"In our country, on the contrary, the people nominate candidates to the U.S.S.R. Supreme Soviet. In the United States Congress there is not a single worker, while the U.S.S.R. Supreme Soviet is made up exclusively of workers, collective farmers, scientists, party functionaries and government officials, teachers,

writers, artists, that is, men and women representing the entire people."

The present Electoral System in the U.S.S.R. can be illustrated by the diagram given below.



### Economic Commission of the Soviet of Nationalities

The Commission was set up in 1947. Apart from its Chairman, it has an elected body of 30 Soviet of Nationalities Deputies, two from each Republic. All the Commission members are experienced people and enjoy great prestige in their native localities. They are Chairmen of Supreme Soviet Presidiums, the heads of the Republican Governments, economists and agricultural specialists.

The Commission has sub-commissions on industry, transport, communications, road-building, agriculture, housing and municipal construction, trade and procurement, culture and public



health and public incomes. Each sub-commission is composed of 4 to 5 members who are specialists in their respective lines. Apart from the Deputies, the representatives of the corresponding ministries, scientific establishments and public organisations also take part in the proceedings of each sub-commission.

As regards the work already done by the Commission, it is to be noted that it began by studying all the branches of economies of the Union Republics, familiarised itself with the criticisms and suggestions made by the Deputies and analysed the comparative data. After a thorough study of these questions, the Economic Commission advised the Soviet Government to eliminate the shortcomings in the training of young specialists in certain Republics, territories and regions. The Commission has also made recommendations with a view to improve the supply of fuel, improve the cultural services and public amenities and the work of municipal and medical establishments. It has also recommended the grant of more money for sewage work. It is analyzing the needs and requests of the Union Republics and is drafting proposals for long-range national economic development plan for 1959-65.

### SUGGESTED READINGS

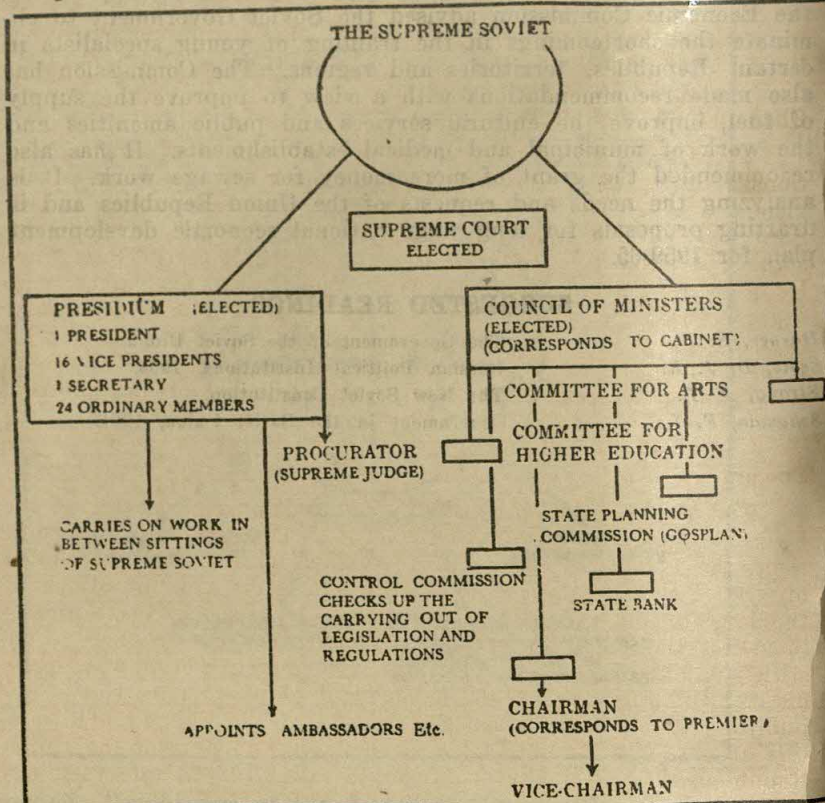
- |                        |   |                                       |
|------------------------|---|---------------------------------------|
| <i>Harper, S. N.</i>   | : | The Government of the Soviet Union.   |
| <i>Scott, D. J. E.</i> | : | Russian Political Institutions, 1958. |
| <i>Strong, A. L.</i>   | : | The New Soviet Constitution.          |
| <i>Schuman, F. L.</i>  | : | Government in the Soviet Union, 1961. |

## CHAPTER 19

### PRESIDIUM OF THE SUPREME SOVIET OF THE U.S.S.R.

#### Election and Composition

The Presidium of the Supreme Soviet of the U.S.S.R. is a unique feature of the Soviet Constitution. It consists of a Presi-



dent of the Presidium of the Supreme Soviet of the U.S.S.R., 15 Vice-Presidents, a Secretary of the Presidium and 15 members of Presidium of the Supreme Soviet of the U.S.S.R. It is elected by the Supreme Soviet of the U.S.S.R. at a joint sitting of the two Chambers. It is **accountable to the Supreme Soviet** of the U.S.S.R. for all its activities. The normal term of office of the Presidium is four years. However, if the Supreme Soviet of the U.S.S.R. is dissolved earlier, the Presidium is also dissolved earlier. According to Article 53, on the expiration of the term of office of the Supreme Soviet of the U.S.S.R. or on its dissolution prior to the expiration of its term of office, the Presidium of the



Supreme Soviet of the U.S.S.R. retains its powers until the newly-elected Supreme Soviet of the U.S.S.R. forms a new Presidium of the Supreme Soviet of the U.S.S.R. According to Article 54, on the expiration of the term of office of the Supreme Soviet of the U.S.S.R. or in the event of its dissolution prior to the expiration of its term of office, the Presidium of the Supreme Soviet of U.S.S.R. orders new elections to be held within a period not exceeding two months from the date of the expiration of the term of office or dissolution of the Supreme Soviet of the U.S.S.R. According to Article 55, the newly-elected Supreme Soviet of the U.S.S.R. is convened by the outgoing Presidium of the Supreme Soviet of the U.S.S.R. not later than three months after the elections.

### **Chairman of Presidium**

The Chairman of the Presidium performs some of the functions given to the Presidium itself although there is no such provision in the Constitution. When the laws are passed by the Supreme Soviet of the U.S.S.R., those are promulgated under his signatures. He also signs the decrees on behalf of the Presidium. He receives foreign envoys and diplomats. He exchanges messages with the heads of other States. In a way, he is the titular head of the State. According to Carter, "As in the case of his foreign counterparts, his most important function is to mix with the ordinary citizens as a living human symbol of the paternal concern of the government with their welfare."

### **Powers**

The powers of the Presidium of the Supreme Soviet of the U.S.S.R. are given in Article 49 of the Constitution. According to it, the Presidium convenes the sessions of the Supreme Soviet of the U.S.S.R. It issues decrees. It gives interpretations of the laws of the U.S.S.R. in operation. It dissolves the Supreme Soviet of the U.S.S.R. in conformity with Article 47 of the Constitution and orders new elections. It conducts nation-wide polls on its own initiative or on the demand of one of the Union Republics. It annuls decisions and orders of the Council of Ministers of the U.S.S.R. and of the Councils of Ministers of the Union Republics if they do not conform to law. In the intervals between sessions of the Supreme Soviet of the U.S.S.R., it releases and appoints Ministers of the U.S.S.R. on the recommendation of the Chairman of the Council of Ministers of the U.S.S.R., subject to subsequent confirmation by the Supreme Soviet of the U.S.S.R. It institutes decorations (Orders and Medals) and titles of honour of the U.S.S.R. It awards Orders and Medals and confers titles of honour of the U.S.S.R. It exercises the right of pardon. It institutes military title, diplomatic ranks and other special titles. It appoints and removes the high command of the Armed Forces of the U.S.S.R. In the intervals between the sessions of the Supreme Soviet of the U.S.S.R. it proclaims a state of war in the event of military attack on the U.S.S.R. or when necessary to fulfil international treaty obligations concerning mutual de-



fence against aggression. It orders general or partial mobilization. It ratifies and denounces international treaties of the U.S.S.R. It appoints and recalls plenipotentiary representatives of the U.S.S.R. to foreign States. It receives the letters of credence and recall of diplomatic representatives accredited to it by foreign States. It proclaims martial law in separate localities or throughout the U.S.S.R. in the interests of the defence of the U.S.S.R. or the maintenance of public order and security of the State.

According to Dr. Finer, the Presidium is "the continuous Government of the Soviet Union in fact as well as in law". Its functions are partly legislative and partly executive. It issues decrees and it invades freely the sphere which the Constitution reserves to the Supreme Soviet of the U.S.S.R. The Presidium can dismiss and replace ministers. In the case of a deadlock, it can call for an election. The presidium has not so far dissolved the Supreme Soviet. It has not so far organised any referendum. However, it has used all other powers effectively. To all intents and purposes, the Supreme Soviet has been eclipsed by the Presidium.

According to Vyshinsky, "the Presidium of the Supreme Soviet is a collegiate President. He has no such special rights as characterise the individual Presidents of bourgeois States. His rights flow out of his position as President of a collegium institution of specialist authority." (*The Law of the Soviet State*.)

According to Ogg and Zink, "The record shows that the Presidium has taken a more active role in handling the work of government than its parent body, the Supreme Council. But the same situation exists here that was noted in the case of Council: most matters of any considerable consequence are canvassed and decided by the Politbureau. Consequently, it is impossible for the Presidium to exercise real authority in foreign affairs, national defence or domestic politics. Its main duty is concerning routine matters and formalities which in itself involve a lot of work."

According to Julian Towster, "The Presidium of the Supreme Soviet, constitutionally classified as one of the highest organs of the state power, as—like its predecessors, the Presidium of the C.E.C.—fulfilled the need of a continually operating, presenting the summit of the formal Soviet pyramid and performing a wide variety of functions. Though the competence assigned to it differs in several aspects from that of the Presidium of the C.E.C., particularly in the publicly emphasized law of legislative power in the Presidium of the Supreme Soviet, the latter has not only acted as 'collective president', of the Soviet State, but has in fact served to a large extent as a legislative organ in the Soviet structure." (*Political Power in the U.S.S.R.*, p. 272.)

According to V. Brabashev, "The Presidium is composed of people who know the life of the nation well and consider they have a great duty to serve its interests. Side by side with promi-



nent political leaders, the members of the Presidium include workers at industrial enterprises. (For instance, there is Varara Fedorova, a weaver, Mikhail Privalov, a senior foreman at an iron and steel combine, Galina Burkatskaya and Khamrakul Tursunkulov, both chairmen of collective farms)....

"The close bonds existing between the Presidium and the people enable the former to make a correct estimate of society's needs and the requirements of socialist construction, and also to keep track of public initiative.

"Last July, for instance, following a move on the part of Soviet trade unions, the Presidium issued a decree ratifying rules which extended the rights of factory, plant and local trade union committees. In January 1957 the Presidium confirmed the rules on the settlement of labour disputes; according to which any conflict that may arise between the administration and the workers is to be considered by a special commission composed of representatives of the trade union organizations on the one hand and representatives of the administration on the other, on an equal basis.

"With the aim of further improving maternity and child welfare, another decree was issued in March 1965, extending paid leave before and after childbirth from 77 to 112 days. In December, of the same year the Presidium issued two more decrees. This time with a view to increasing measures to safeguard young people in their work.

"So one can see that not only by virtue of its tasks, composition and activity, but also by the character of its relations with the Supreme Soviet of the U.S.S.R., the Presidium of the Supreme Soviet is a truly democratic organ, which exercises the power of the people."

According to another writer, "In capitalist countries there is no organ of State power analogous to the Presidium of the Supreme Soviet of the U.S.S.R. There, one man is the head of the State—a King, or a President. He is not accountable to parliament, he stands above parliament, he has the power to veto any measure adopted by parliament, and even to dissolve parliament. In the Soviet Union, not one man, but a collective body is at the head of the State, viz., Presidium of the Supreme Soviet of the U.S.S.R., which, as Comrade Stalin has expressed it, is the collective President of the U.S.S.R." (*Soviet Socialist State*, p. 36.)

### SUGGESTED READINGS

- |                        |                                       |
|------------------------|---------------------------------------|
| <i>Harper, S. N.</i>   | : The Government of the Soviet Union. |
| <i>Scott, D. J. R.</i> | : Russian Political Institutions.     |
| <i>Strong, A. L.</i>   | : The New Soviet Constitution.        |

## CHAPTER 20

### COUNCIL OF MINISTERS OF THE U.S.S.R.

Before March 1946, the Council of Ministers of the U.S.S.R. was known as the Council of People's Commissars. It was in that year that the terminology was changed with a view to bring it in line with the practice of the Western countries.

According to Article 64, the Council of Ministers of the U.S.S.R. is the highest executive and administrative organ of the State power of the U.S.S.R. Article 56 equates the Council of Ministers of the U.S.S.R. with the Government of the U.S.S.R.

According to Article 56, the Supreme Soviet of the U.S.S.R. at a joint sitting of the two Chambers appoints the Council of Ministers of the U.S.S.R. According to Article 70, the Council of Ministers consists of the Chairman of the Council of Ministers of the U.S.S.R., the Vice-Chairman of the Council of Ministers of the U.S.S.R., the Chairman of the State Planning Committee of the Council of Ministers, the Chairman of the State Committee on the material and technical supply of the national economy, the Chairman of the State Committee on construction, the Ministers of the U.S.S.R. and the Chairman of the Arts Committees.

#### All-Union Ministries

The Ministries of the U.S.S.R. are either all-Union or Union-Republican ministries. Articles 77 and 78 give a list of the All-Union ministries and the Union-Republican ministries. The following are the All-Union Ministries:—

The Ministry of the Aircraft Industry.

The Ministry of the Automobile and Tractor Industry.

The Ministry of Paper and Wood-working Industry.

The Ministry of Foreign Trade.

The Ministry of Navy.

The Ministry of Munitions.

The Ministry of Geological Survey.

The Ministry of City Building.

The Ministry of State Food and Material Reserves.

The Ministry of Agricultural Stocks.

The Ministry of the Machine and Instrument-making Industry.

The Ministry of the Merchant Marine.

The Ministry of the Oil Industry.



- The Ministry of Communications Equipment Industry.
- The Ministry of Railways.
- The Ministry of Inland Water Transport.
- The Ministry of Communications.
- The Ministry of Agricultural Machinery Industry
- The Ministry of Machine-Tool Industry.
- The Ministry of the Building and Road-Building Machinery Industry.
- The Ministry of Construction of Machine-Building Works.
- The Ministry of Construction of Heavy Industry Works.
- The Ministry of Ship-building.
- The Ministry of the Transport Machinery Industry.
- The Ministry of Labour Reserves.
- The Ministry of the Heavy Machine-Building Industry.
- The Ministry of the Coal Industry.
- The Ministry of the Chemical Industry.
- The Ministry of the Non-ferrous Metal Industry.
- The Ministry of the Iron and Steel Industry.
- The Ministry of the Electrical Industry.
- The Ministry of Power Stations.

### **Union Republican Ministries**

Article 78 refers to the following Union-Republican Ministries:---

- The Ministry of Internal Affairs.
- The Ministry of the Army.
- The Ministry of Higher Education.
- The Ministry of State Control.
- The Ministry of State Security.
- The Ministry of Public Health.
- The Ministry of Foreign Affairs.
- The Ministry of Cinematography.
- The Ministry of Light Industry.
- The Ministry of Forestry.
- The Ministry of the Timber Industry.
- The Ministry of the Meat and Dairy Industry.
- The Ministry of the Food Industry.
- The Ministry of the Building Materials Industry.
- The Ministry of the Fish Industry.

The Ministry of Agriculture.  
The Ministry of State Farms.  
The Ministry of Trade.  
The Ministry of Finance.  
The Ministry of Cotton-Growing.  
The Ministry of Justice.

### Distinction

As regards the distinction between the All-Union ministries and the Union-Republican ministries, while the former deal essentially with those matters which are federal in character, the latter deal with matters of common jurisdiction through the corresponding ministries of the various republics. According to Prof. Munro, "Administration is centralized in Moscow in the case of All-Union ministries. On the other hand, in the case of Union-Republican ministries, the control of administrative work is centralized but the performance of it is to a considerable extent decentralized."

It is to be observed that the number of ministries has increased with the passage of time. In 1924, the number of the ministers known as the People's Commissars was only 10. As administrative machinery became more and more complicated and the scope of the government activities expanded, the number of ministries began to increase. In 1947, the number of ministries was in the neighbourhood of 60. The increase in the size of the Cabinet has led to the growth of a sort of inner Cabinet. The inner Cabinet consists of the Chairman of the Council of Ministers and the Vice-Chairman who are responsible for a number of inter-related ministries.

The Chairman of the Council of Ministers is popularly known as the *Premier* of the Soviet Union. This office is occupied by a top party man. Lenin was the Soviet Premier from 1917 to 1924. Rykov was the Premier from 1924 to 1930. Molotov held that office up to 1941. After that, Stalin himself became the Premier and held that position up to his death. At present Alexi Kosygin is the Soviet Premier.

Reference may be made to the Ministry of State Control. It maintains the supervision of all State organs and their activities. Although it is a ministry, it was nominated by the party Central Committee before 1947 and its functions were performed by the Soviet Control Commission. It was in that year that the Soviet Control Commission was transformed into the Ministry of State Control.

Although the Constitution says that the members of the Council of Ministers are appointed by the Supreme Soviet of U.S.S.R. at a joint sitting of the two chambers, yet it is only a formality. The real choice is made by the Communist Party itself. The following account regarding the formation of the Council of Ministers in



1946 gives an idea as to how the ministries are formed in actual practice: "The head of the outgoing government, Comrade J. V. Stalin, submitted a written statement to the Chairman of the joint session of the chambers declaring that the government surrendered its powers to the Supreme Soviet. The Supreme Soviet accepted the statement of the government and unanimously commissioned Comrade Stalin to submit proposals for a new government. At the next joint sitting of the chambers, the Chairman announced the composition of the new government as proposed by Comrade Stalin. After statements by Deputies the Chairman declared that there was no objection to any of the proposed candidates and that none of the Deputies insisted on a roll-call vote. The composition of the Council of Ministers of the U.S.S.R., as proposed by Comrade Stalin, was then voted on as a whole and unanimously adopted amidst loud applause passing into an ovation in honour of Comrade Stalin, who was elected Chairman of the Council of Ministers of the U.S.S.R. and Minister of its armed forces. V. M. Molotov, Comrade Stalin's close associate, was approved as Minister of Foreign Affairs."

### **Powers of the Council of Ministers**

Article 68 of the Constitution refers to the powers of the Council of Ministers. According to it, the Council of Ministers coordinates and directs the work of the All-Union and Union-Republican ministries of the U.S.S.R. and all other institutions under its jurisdiction. It adopts measures to carry out the national-economic plan and the State budget and to strengthen the credit and monopoly system. It adopts measures for the maintenance of public order, for the protection of the interests of the States and for the safeguarding of the rights of citizens. It exercises general guidance in the sphere of relations with foreign States. It fixes the annual contingent of citizens to be called up for military service and directs the general organization of Armed Forces of the country. It sets up, whenever necessary, special committees and Central administrations under the Councils of Ministers of the U.S.S.R. for economic and cultural affairs and defence. According to Article 69, the Council of Ministers of the U.S.S.R. has the right in respect of those branches of administration and economy which come within the jurisdiction of the U.S.S.R., to suspend decisions and orders of the Council of Ministers of the Union-Republics and to annul orders and instructions of Ministers of the U.S.S.R. According to Article 72 the Ministers of the U.S.S.R. direct the branches of State administration which come within the jurisdiction of the U.S.S.R. According to Article 73, the Ministers of the U.S.S.R. within the limits of the jurisdiction of their respective ministries, issue orders and instructions on the basis and in pursuance of the laws in operation and also of decisions and orders of the Council of Ministers of the U.S.S.R., and verify their execution. According to Article 75, each All-Union ministry directs the branch of State administration entrusted to it throughout the territory of the U.S.S.R. either directly or through bodies appointed by it. According to Article 76, the all-Union ministries, as a rule, direct the branches of State adminis-



ration entrusted to them through corresponding ministries of the Union Republics. They administer directly only a definitely and limited number of enterprises according to a list confirmed by the Presidium of the Supreme Soviet of the U.S.S.R. According to Article 66, the Council of Ministers of the U.S.S.R. issues decisions and orders on the basis and in pursuance of the laws in operation and verifies their execution.

### Responsibility of Ministers

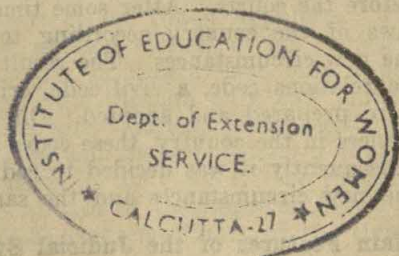
According to Article 65 of the Constitution, the Council of Ministers of the U.S.S.R. is responsible and accountable to the Supreme Soviet of the U.S.S.R., or in the intervals between sessions of the Supreme Soviet, to the Presidium of the Supreme Soviet of the U.S.S.R. According to Article 71, the Government of the U.S.S.R. or a Minister of the U.S.S.R. to whom a question by a member of the Supreme Soviet of the U.S.S.R. is addressed must give a verbal or written reply in the respective Chambers within a period not exceeding three days. Article 31 also provides that the Council of Ministers of the U.S.S.R. and the ministries of the U.S.S.R. are accountable to the Supreme Soviet of the U.S.S.R. Critics point out that the above provisions in the Constitution do not establish the responsibility of the ministers to the legislature. All decisions are taken in the meetings of the Communist Party and the legislature merely ratifies them. There are no Opposition parties in the legislature and there is hardly any criticism of the Government. The ministers are merely asked to give information and nothing more. They cannot be turned out because no vote of no confidence can be passed against them. There can be no alternative government. It is pointed out that "when the Council of Ministers reports back to the Supreme Soviet, it is a case of party members in the administration reporting to the party members (and sympathisers) in the Soviet Assembly concerning matters which have been under the constant supervision and authorization of the Communist Party itself." Prof. Munro has made the following observations with regard to ministerial responsibility in Soviet Russia: "Does the new Constitution establish responsible government through ministerial responsibility in Soviet Russia? The answer is that technically it does. The All-Union Council of People's Commissars is in effect a ministry. Its members function together as a cabinet and individually as cabinet ministers. They are appointed by the Supreme Council or Union Parliament and are responsible to that body. On paper there is no essential difference between Soviet Russia and the French Republic in the matter of ministerial responsibility. But in practice there is a great deal of difference. The Soviet commissars are not actually chosen by the legislative body. They are hand-picked by the Politbureau of the Communist Party, which in turn is made up of men appointed by the secretary-general of that party. They are not responsible to the legislative body, or even to the Presidium, save in a purely technical sense. Whether a commissar holds his post, or loses it,



depends upon his standing with the party leaders, not with the parliamentary leaders." (*Governments of Europe*, pp. 748-9.)

### SUGGESTED READINGS

- Harper, S. N. : The Government of the Soviet Union.  
 Scott, D. J. E. : Russian Political Institutions, London, 1958.  
 Strong, A. L. : The New Soviet Constitution.



## CHAPTER 21

### THE SOVIET JUDICIAL SYSTEM

The present judicial system in Soviet Russia is based on Chapter IX of the Constitution and the Law of the Judiciary of the U.S.S.R., the Constituent Republic and the Autonomous Republics as approved by the Supreme Soviet of the U.S.S.R. in August, 1938. The Procurator-General or Chief Public Prosecutor plays an important part in the judicial administration of the country.

It is to be observed that soon after the Russian Revolution of 1917, the old laws of the Czarist regime were cancelled as they were considered to be a part and parcel of the old system. People's courts were set up for the purpose of deciding cases but judgments were given on the basis of commonsense or what was considered to be just under the circumstances. There was no citation of case-law before the courts. After some time, efforts were made to codify the laws of the country according to the needs of the people under the new circumstances. The result was that a labour code, a domestic relations code, a civil code, criminal code and procedural codes were prepared and adopted. On account of the changing circumstances in the country, these codes became out of date very soon and consequently it was decided to codify the law of the country under the new circumstances and the same was done in 1938.

#### Main Features of the Judicial System

(1) Reference may be made to some of the main features of the judicial system in Soviet Russia. The first thing to be notified is that all the courts in Soviet Russia are elected in one way or the other. The Supreme Court of the U.S.S.R. and the Special Courts of the U.S.S.R. are elected by the Supreme Soviet of the U.S.S.R. for a term of five years. The Supreme Courts of the Union Republics are elected by the Supreme Soviets of the Union Republics for a term of five years. The Supreme Courts of the Autonomous Republics are elected by the Supreme Soviets of the Autonomous Republics for a term of five years. The courts of Territories, Regions, Autonomous Regions and Areas are elected by the Soviet of Working People's Deputies of the respective Territories, Regions, Autonomous Regions or Areas for a term of five years. People's Courts are elected by the citizens of the districts on the basis of universal, direct and equal suffrage by secret ballot for a term of three years. (Articles 105-9.)

(2) The judicial proceedings in the various courts are conducted in the language of the Union Republic, Autonomous Republic or Autonomous Region. If a person does not know or understand that language, he is given the right to acquaint himself with the relevant material through an interpreter and also use his own language in the court. (Article 110.)



(3) In all courts of the U.S.S.R., the cases are heard in public, unless otherwise provided by law, and the accused is guaranteed the right to defend himself. (Article 111.)

(4) In all courts, the people's assessors participate along with the judges except in cases specially provided for by law. According to the law of 1938, two people's assessors sit with the Chairman of the court or a member appointed by him in all cases tried for the first time. Appellate cases are reviewed by three members of the court. The assessors of the People's courts enjoy equal rights with the judges and all questions are decided by a majority of votes. All those persons who have the right to vote are also entitled to be elected as judges or assessors. Both the judges and the assessors can be recalled by voters. They can also be removed if a verdict is passed against them in a criminal proceeding. Ordinarily, only those persons are elected as judges who have some professional training.

(5) Provision is made for the taking of appeals against the decisions of all the courts except in the case of Supreme Court of the U.S.S.R. and the Supreme Court of the Union Republics. The appeal can be made either by the accused himself or his representative or by a Procurator. No courts in Russia have only appellate jurisdiction. As a rule, cases pass through only two judicial stages and only in rare cases when great injustice has been done by a patently wrong decision, a case can be reviewed on a protest made by either the Procurator-General of the U.S.S.R., the Procurator of the Union Republic, the Chairman of the Supreme Court of the U.S.S.R. or the Chairman of the Supreme Court of the Union Republic.

(6) The courts in U.S.S.R. are expected to perform a very important function which is not considered to be the duty of courts in other countries. According to the law of 1938, it is the duty of the courts in Soviet Russia "to educate the citizens of the U.S.S.R. in a spirit of devotion to the fatherland (Rodina) and to the cause of socialism, in the spirit of an exact and unfaltering performance of Soviet Laws, careful attitude towards socialist property, labour discipline, honest fulfilment of State and public duties, respect towards the rules of the commonwealth." According to Lenin and Stalin, it was the duty of the courts in Soviet Russia to fight the enemies of the people, traitors to the country, spies, saboteurs and wreckers and also to fight for "consolidation of the new Soviet system, to firmly anchor the new socialist discipline among the working people." According to another writer, the courts in Soviet Russia "inculcate a sense of obligation to treat socialist property with care, to discharge duties to the State and the public honestly in a spirit of devotion to the Soviet motherland and the cause of Communism." According to Rychkov, Commissar of Justice in 1938, "The judiciary is an important and sharp weapon of the dictatorship of the working class in the cause of strengthening socialist Constitution and defending the conquest of the October Socialist Revolution. That is why it is the duty of all judicial officials, all local Party and

Soviet organs, properly to organise the organs of the judiciary, to improve their work, to select and advance for the judicial organs, new, honest, and devoted to the cause of socialism, Party and non-Party Bolsheviks." According to Kalinin, it is the duty of the courts in Soviet Russia "to overcome the survivals of capitalism in economic field and in the conscience of the people." To quote him again, "If a judge is a good Marxist, a dialectician, and experienced practical worker, a cultured, literate person then it can be firmly said that 99 per cent of his verdicts and discussions would have positive political significance, would constitute one of the best forms of propaganda of Soviet laws, propaganda of the Party's directives. If the judge is a poor Marxist, who does not know the Party decisions, is unable to fight strongly enough for the Party decisions, and lets himself be led by local organizations, he is no good." According to Vyshinsky, "The judiciary in every State plays a tremendous role as a fighting organ for the guarding of the class dominant in the given stage. The judiciary is a mighty means for the strengthening of the social and political relations dominant in this or that country which reflect the interests of the class dominant in the given society." According to Poliansky, "It is self-evident that the independence of the judges does not release them from the duty to obey political directives, which, of course, cannot go against the Soviet law that expresses the will of the people, the law-giver directed by the dictatorship of the proletariat." To quote Commissar Rychkov again, "The election of courts would immeasurably strengthen our judicial organs, would make the Soviet judiciary an even mightier instrument in the hands of the working class. The daily aid and attention paid to the Soviet judiciary by our government and by the nearest colleagues of the great Stalin.... is a guarantee for that." Again, "The State demands that all its courts shall wage an implacable struggle against all the enemies of Socialism. In sweeping away and utterly exterminating the traitorous Trotskyites and Bucharinites, the courts will be fulfilling their sacred duty towards the country."

(7) The Soviet judicial system may be admirable so far as non-political cases are concerned, but in political cases, it is absolutely arbitrary and mercilessly cruel. It is admitted that in such cases "verdicts and sentences of the Soviet Courts mercilessly strike down the enemies of Socialism." According to Article 133 of the Stalin Constitution, to defend the country is the sacred duty of every citizen of the U.S.S.R. Treason to the Motherland—violation of the oath of allegiance, desertion to the enemy, impairing the military power of the State, espionage—is punishable with all the severity of the law as the most heinous crimes. According to Article 131, persons committing offences against public, socialist property are the enemies of the people and have to be dealt with accordingly. Formerly, capital punishment was abolished in Soviet Russia, but the same has been revived for the traitors. etc.

### Organization of Courts

According to Article 102 of the Constitution, justice in the



U.S.S.R. is administered by the Supreme Court of the U.S.S.R., the Supreme Courts of the Union Republics, the Courts of the Territories, Regions and Autonomous Republics, Autonomous Regions and Areas, the Special Courts of the U.S.S.R. established by the Supreme Soviet of the U.S.S.R., and the People's Courts.

### People's Courts

The People's Courts are elected by the citizens of the districts on the basis of universal, direct and equal suffrage by secret ballot for a term of three years. These are exclusively courts of original jurisdiction and most of the civil and criminal cases are brought before them. As regards its criminal jurisdiction, it includes crimes against life, health, liberty and dignity of citizens, property crimes, service crimes and crimes against the system of administration. As regards its civil jurisdiction, it includes cases regarding property, labour laws, alimony and inheritance. The number of the People's Courts in any district is decided by the Council of Ministers of the Union Republic or the Autonomous Republics in which the People's Courts have to be located. This is done at the instance of the Minister of Justice for the area concerned. The judges of the People's Courts are assisted by the assessors. However, the assessors are not asked to attend for more than 10 days a year. It is the duty of the judges of the People's Courts to report periodically to the voters on their work and the work of the People's Courts.

The Regional or Territorial and Area Courts, the Courts of Autonomous Regions and the Supreme Courts of the Autonomous Republics have original jurisdiction in criminal cases relating to counter-revolutionary crimes, cases of particular danger to the U.S.S.R., cases regarding important administrative and economic crimes. As regards their civil jurisdiction, they dispose of cases between State and public institutions, enterprises and organizations. Each of these courts consists of a Chairman, Deputy Chairman, members and people's assessors.

### Supreme Court of the Union Republic

The Supreme Court of the Union Republic is the highest judicial organ in a Union Republic. It exercises supervision over the administration of justice within the whole of the Union Republic and its various units. This is done on the protest of the Procurator-General or Chairman of the Supreme Court of the U.S.S.R., or of the Procurator or Supreme Court Chairman of the Union Republic. This is done against the verdicts, decisions or other judicial dispositions that have gone into effect. The Supreme Court of the Union Republic can set aside the verdict of any Court within the Republic. It has original jurisdiction in important civil and criminal cases.

### Supreme Court of the U.S.S.R.

The Supreme Court of the U.S.S.R. is the highest judicial organ of the land and is elected for a term of 5 years. It is charged with the supervision of the judicial activities of all the judicial organs of the

U.S.S.R. and of the Union Republics. It acts as a court of original jurisdiction in very important civil and criminal cases. The Supreme Court consists of a Chairman, Deputy Chairman and members. The number of judges of the Supreme Court was 45 in 1938, but the same was increased to 68 in 1946. The Supreme Court is divided into 5 Collegia, *viz.*, Criminal Collegium, Civil Collegium, Military Collegium, Railway Collegium and Water Transport Collegium. When a collegium sits as a court of original jurisdiction, it consists of two people's assessors and a member of the court. However, when it acts as a court of revenue, it consists of three members of the court. The Chairman of the Supreme Court of the U.S.S.R. can act as the presiding judge in any case under consideration by a Collegium of the Supreme Court. He has a right to remove a case from the calendar of any court in the U.S.S.R. or the Union Republic and also to protest before the Full Bench of the Supreme Court. The Supreme Court has always been considered as a part of the administration. It is not considered to be a superior or independent branch of the Government. Only those persons are appointed the judges of the Supreme Court who have proved their complete faith in Communist principles and programme. According to Diablo, "The decisions of the Supreme Court of the U.S.S.R. have no independent significance, since they are subject to confirmation by the Presidium C.E.C. U.S.S.R." According to Turnbier, "This function of guarding the Constitution by way of verification of the constitutionality of laws, which in the United States is given to the Supreme Court, we—in connection with the idea of concentration of power—give to the Central Executive Committee and its Presidium; the Supreme Court of the Union only renders opinions."

It is to be observed that the Supreme Court of the U.S.S.R. does not possess the power of judicial review. It cannot declare any law unconstitutional or *ultra vires*. It cannot cancel the decisions of the Council of Ministers.

### Special Courts

Reference may be made to the Special Courts in Soviet Russia. Examples of such courts are the juvenile courts, land courts, courts of arbitration and military courts. Military courts do not always confine themselves to the trial of military personnel, but sometimes even civilians are tried by the military courts. There is no fair trial for the accused in these courts. Although the Constitution guarantees to every accused the right of defence, but in the case of political offences, this right becomes a farce. There is no provision for a Writ of *Habeas Corpus* and consequently there is no way to take out a person from prison even if he is there without any justification and against the very law of the country. There are no regular jury trials. The necessity for special Military Tribunals arises out of "the necessity of strengthening the military might of the U.S.S.R. and military discipline." The special Line Courts are created on account of the conditions prevailing on the railways and in the water transport system.



## Arbitration Tribunals

A large number of cases in the U.S.S.R. are disposed of by the arbitration tribunals. These tribunals are created by the Government to dispose of disputes between two or more State enterprises.

## Lawyers

It is to be observed that lawyers do not play any important part in the judicial system of Soviet Russia. That is due to the fact that the Communists consider the institution of lawyers as a bourgeois institution. The result is that the judges have to interrogate the witnesses and the accused.

## Procurator-General and Procurators

According to Articles 113 to 117 of the Constitution, supreme supervisory power to ensure the strict observance of the law by all ministries and institutions subordinate to them, as well as by officials and citizens of the U.S.S.R. generally, is vested in Procurator-General of the U.S.S.R. The latter is appointed by the Supreme Soviet of the U.S.S.R. for a term of 7 years. Procurators of the Republics, Territories, Regions and Autonomous Regions are appointed by the Procurator-General of the U.S.S.R. for a term of 5 years. Area, district and city Procurators are appointed by the Procurators of the Union Republics, subject to the approval of the Procurator-General of the U.S.S.R., for a term of 5 years. The organs of the Procurator's office perform their functions independently of any local organs whatsoever, being subordinate solely to the Procurator-General of the U.S.S.R.

It is to be observed that the office of the Procurator came into existence from the very beginning of the Committee regime in Russia. Then it was attached to the Supreme Court of the U.S.S.R. It was not an independent organ with the duty of unifying and directing the activities of the Procurators throughout Russia. The local procurators were under the Procurators of the Union Republics, who were members of the Commissariats of Justice of the Republics. In 1933, the office of the Procurator of the U.S.S.R. was made independent of the Supreme Court of the U.S.S.R. Changes were again made by the Constitution of 1936. The long term of office of seven years for the Procurator-General is justified in these words: "Such a long term, exceeding all other terms set by the Constitution for the occupancy of any of the offices, is explained by the fact that for an organ that supervises legality, stability of leadership is of particular importance. The requirement of stability of the laws concerns not only the issuance of laws but also their application. And supervision over the application of the laws constitutes the fundamental duty of the Procuratorial Office."

The office of the Procurator-General of the U.S.S.R. is highly centralised. It is based on the principle of one-man management. The Procurator-General is not a member of the Council of Ministers. He is not under the Minister of Justice or any other Minister. He is an independent person who is directly subordinate to the Supreme

Soviet of the U.S.S.R. According to Golunsky, "No departmental hierarchical consideration can influence the Soviet Procuratorial Office in the execution of the tasks placed upon it." It is his duty to see that justice is administered according to the law of the country and when injustice has been done it is his duty to protest to the court concerned and get the wrong redressed. He is assisted in his work by the Komsomol, the trade unions, the factory and village correspondents.

The position of the Procurator-General has been emphasized in these words: "In instituting or investigating criminal cases, in acting as prosecutor in court, in examining complaints, in making protests against unlawful decisions of any organ of power, Soviet Procurator is a guardian of socialist legality, a carrier of the policy of the Communist Party and Soviet authority; a fighter for the cause of socialism."

### SUGGESTED READINGS

- |   |   |
|---|---|
| <i>Berman, H. J.</i>                          | : Justice in Russia, 1950.              |
| <i>Callicott, M. S.</i>                       | : Russian Justice, 1935.                |
| <i>Gsovski, Vladimír</i>                      | : Soviet Civil Law, 1948.               |
| <i>Hazard, John N. and<br/>Shapiro, Isaac</i> | : The Soviet Legal System, 1962.        |
| <i>Scott, D. J. R.</i>                        | : Russian Political Institutions, 1958. |
| <i>Schlesinger, R.</i>                        | : Soviet Legal Theory, 1951.            |
| <i>Vyshinsky, A. Y.</i>                       | : The Law of the Soviet State.          |

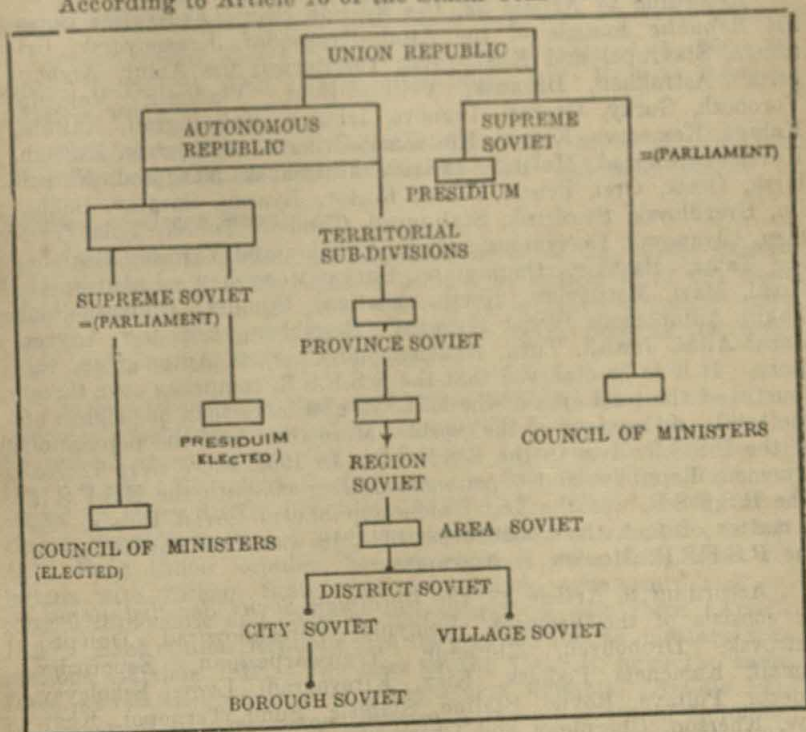


## CHAPTER 22

### ADMINISTRATION OF THE UNION REPUBLICS

Units of Soviet Russia

According to Article 13 of the Stalin Constitution, the U.S.S.R.



consists of the following 16 Union Republics:—

- The Russian Soviet Federative Socialist Republic.
- The Ukrainian Soviet Socialist Republic.
- The Byelorussian Soviet Socialist Republic.
- The Uzbek Soviet Socialist Republic.
- The Kazakh Soviet Socialist Republic.
- The Georgian Soviet Socialist Republic.
- The Azerbaijan Soviet Socialist Republic.
- The Lithuanian Soviet Socialist Republic.
- The Moldavian Soviet Socialist Republic.
- The Latvian Soviet Socialist Republic.

The Kirghiz Soviet Socialist Republic.

The Tajik Soviet Socialist Republic.

The Armenian Soviet Socialist Republic.

The Turkmen Soviet Socialist Republic.

The Estonian Soviet Socialist Republic.

The Karelo-Finnish Soviet Socialist Republic.

According to Article 22, the *Russian Soviet Federative Socialist Republic* consists of the Altai, Krasnodar, Krasnoyarsk, Primorye, Stavropol and Khabarovsk Territories; the Amur, Archangelsk, Astrakhan, Bryansk, Velikiye-Luki, Vladimir, Vologda, Voronezh, Gorky, Grozny, Ivanovo, Irkutsk, Kaliningrad, Kalinin, Kaluga, Kemerovo, Kirov, Kostroma, Crimea, Kuibyshev, Kurgan, Kursk, Leningrad, Molotov, Moscow, Murmansk, Novgorod, Novosibirsk, Omsk, Orel, Penza, Pskov, Rostov, Ryazan, Saratov, Sakhalin, Sverdlovsk, Smolensk, Stalingrad, Tambov, Tamsk, Tula, Tyumen, Ulyanovsk, Chelyabinsk, Chita, Chkalov and Yaroslav Regions; the Tatar, Bashkir, Daghestan, Buryat-Mongolian, Kabardinian, Komi, Mari, Mordovian, North Ossetian, Udmurt, Chuvash and Yakut Autonomous Soviet Socialist Republics; and the Adygei, Corno-Altai, Jewish, Tuva, Khakass and Cherkess Autonomous Regions. It is to be observed that the R.S.F.S.R. comprises over three-fourths of the total area of the U.S.S.R. and more than one-eighth of the total land surface of the world. More than half the population of the U.S.S.R. lives in the R.S.F.S.R. In 1951, there were 12 Autonomous Republics and 6 Autonomous Regions with the R.S.F.S.R. The R.S.F.S.R. was the first Union Republic of Soviet Russia. As a matter of fact, the Constitution of 1918 was the Constitution of the R.S.F.S.R. Moscow is its capital.

According to Article 23, the *Ukrainian Soviet Socialist Republic* consists of the Vinnitsa, Volhynia, Voroshilovgrad, Dniepropetrovsk, Drohobych, Zhitomir, Transcarpathian, Zaporozhy, Ismail, Kamenets Podolsk, Kiev, Kirovograd, Lvoy, Nikolayev, Odessa, Poltava, Rovno, Stalino, Stanislav, Sumi, Ternopol, Khar'kov, Kherson, Chernigov and Chernovtsi Regions.

According to Article 24, the *Azərbayjan Soviet Socialist Republic* includes the Nakhicheven Autonomous Soviet Socialist Republic and the Negorno-Karabakh Autonomous Region.

According to Article 25, the *Georgian Soviet Socialist Republic* includes the Abkhazian Autonomous Soviet Socialist Republic, the Adjar Autonomous Soviet Socialist Republic and the South Ossetian Autonomous Region.

The *Uzbek Soviet Socialist Republic* consists of the Andizhan, Bukhara, Kashka-Darya, Namangan, Samarkand, Surkhan-Darya, Tashkent, Ferghana and Khorezm Regions and the Kara-Kalpak Autonomous Soviet Socialist Republic. (Article 26.)

The *Kazakh Soviet Socialist Republic* consists of the Akmo-linsk, Aktyubinsk, Almo-Ata, East Kazakhstan, Guriev, Jambul,



West Kazakhstan, Karaganda, Kzyl-Orda, Kokchetav, Kustanal, Pavlodart, North Kazakhstan, Semipalatinsk, Taldy-Kurgan and South Kazakhstan Regions. (Article 18.)

The *Byelorussian Soviet Socialist Republic* consists of the Baranovich, Bobruisk Brest, Vitebsk, Gomel, Grodno, Minsk Moghilev, Molodechno, Pinsk, Polessye and Polotsk Regions. (Article 29.)

The *Turkmen Soviet Socialist Republic* consists of the Ashkhabad, Mari, Tashauz and Chardzhou Regions. (Article 29a.)

The *Khirghiz Soviet Socialist Republic* consists of the Dzhalsal-Abad, Issyk-Kul, Osh, Talas, Tien-Shan and Frunze Regions. (Article 29b.)

The *Lithuanian Soviet Socialist Republic* consists of the Vilnius, Kaunas, Klapeda and Siauliai Regions. (Article 29c.)

### **Position of Union Republics**

According to Article 15, the sovereignty of the Union Republic is limited only in the spheres defined in Article 14 of the Constitution and outside all these spheres, each Union Republic exercises its authority independently. The U.S.S.R. protects the sovereign rights of the Union Republics.

Article 16 provides that each Union Republic has its own Constitution which takes account of the specific features of the Republic and is drawn up in full conformity with the Constitution of the U.S.S.R. The right freely to secede from the U.S.S.R. is reserved to every Union Republic (Article 17). The territory of a Union Republic may not be altered without its consent (Article 18). Each Union Republic has the right to enter into direct relations with foreign States and to conclude agreements and exchange diplomatic and consular representatives with them (Article 18A). Each Union Republic has its own republican military formations (Article 18B). The laws of the U.S.S.R. have the same force within the territory of every Union Republic (Article 19). In the event of divergence between a law of a Union Republic and a law of the Union, the Union law prevails (Article 20). Uniform Union citizenship is established for the citizens of the U.S.S.R. Every citizen of Union Republic is a citizen of the U.S.S.R. (Article 21). There is a similar provision in the Swiss Constitution where the citizen of a canton is the citizen of the Swiss Confederation.

### **Higher Organs of State Power in Union Republics**

The highest organ of State power in a Union Republic is the Supreme Soviet of the Union Republic (Article 57). The latter is elected by the citizens of the Republic for a term of 4 years. The basis of representation is established by the Constitution of the Republic concerned (Article 58). The Supreme Soviet is the sole legislative organ of the Republic. (Article 59.) The Supreme Soviet adopts the Constitution of the Republic and amends it in

conformity with Article 16 of the Federal Constitution. Article 16 provides that the Constitution of the Union Republic must be drawn up in full conformity with the Constitution of the U.S.S.R. The Supreme Soviet confirms the Constitution of the Autonomous Republics forming part of it and defines the boundaries of their territories. It approves of the national-economic plan and the budget of the Republic. It exercises the right of amnesty and pardon of citizens sentenced by the judicial organs of the Union Republic. It decides questions of representation of the Union Republic in its international relations. It determines the manner of organising the military formations of the Republic concerned (Article 60). It also elects the Presidium of the Supreme Soviet of the Union Republic, consisting of a President, a Vice-President, a Secretary and members of the Presidium of the Supreme Soviet of the Union Republic. The powers of the Presidium are defined by the constitution of the Union Republic (Article 61). The Supreme Soviet of a Union Republic elects a Chairman and a Vice-Chairman to conduct its proceedings (Article 62). It also appoints the Government of the Union Republic, namely, the Council of Ministers of the Union Republic (Article 63).

### **Council of Ministers**

The highest executive and administrative organ of the State power of a Union Republic is the Council of Ministers of the Union Republic (Article 79). The Council of Ministers of a Union Republic is responsible and accountable to the Supreme Soviet of the Union Republic. During the intervals between the sessions of the Supreme Soviet of the Union Republic, the Council of Ministers is responsible to the Presidium of the Supreme Soviet of the Union Republic (Article 80). The Council of Ministers issues decisions and orders on the basis and in pursuance of the laws in operation of the U.S.S.R. and of the Union Republics, and of the decisions and orders of the Council of Ministers of the U.S.S.R. and verifies their execution (Article 31). The Council of Ministers of a Union Republic has the right to suspend decisions and orders of the Councils of Ministers of its Autonomous Republics and to annul decisions and orders of the Executive Committees of the Soviet of Working People Deputies of its Territories, Regions and Autonomous Regions (Article 82). The Council of Ministers of the Union Republic is appointed by the Supreme Soviet of the Union Republic and consists of Chairman of the Council of Ministers of the Union Republic, the Vice-Chairman of the Council of Ministers, the Chairman of the State Planning Commission, the Ministers, the Chief of the Arts Administration and the Chairman of the Committee for Cultural and Educational institutions (Article 83). The Ministers of a Union Republic direct the branches of State administration which come within the jurisdiction of the Union Republic (Article 84). The Ministers of a Union Republic, within the limits of the jurisdiction of their respective ministries, issue orders and instructions on the basis and in pursuance of the laws of U.S.S.R. and the Union Republics, of the decisions and orders



of the Councils of Ministers of the U.S.S.R. and the Union Republic, and of the orders and instructions of the Union Republican Ministers of the U.S.S.R. (Article 85).

The Ministries of a Union Republics are either Union Republican or Republican ministries (Article 86). Each Union Republican Ministry directs the branch of State administration entrusted to it and is subordinate both to the Council of Ministers of the Union Republic and to the corresponding Union Republican Ministry of the U.S.S.R. (Article 87). Each Republican Ministry directs the branch of State administration entrusted to it and is directly subordinate to the Council of Ministers of the Union Republic (Article 88).

It is to be observed that although the Union Republics are supposed to enjoy a lot of autonomy, in actual practice the same is limited in many ways. The Central Government in the U.S.S.R. has a dominating influence over the Union Republics. It not only lays down the policies to be followed by the Union Republics but also the manner in which those have to be executed.

### **Autonomous Republics**

The highest organ of State power in an Autonomous Soviet Socialist Republic is the Supreme Soviet of the Autonomous Republic (Article 89). The latter is elected by the citizens of the Republic for a term of 4 years on the basis of representation established by the Constitution of the Autonomous Republic (Article 90). It is the sole legislative organ of the Autonomous Republic (Article 91). Each Autonomous Republic has its own Constitution which takes account of the specific features of the Autonomous Republic and is drawn up to full conformity with the Constitution of the Union Republic (Article 92). The Supreme Soviet of an Autonomous Republic elects the Presidium of the Supreme Soviet of the Autonomous Republic and appoints the Council of Ministers of the Autonomous Republic, in accordance with its Constitution (Article 93).

It is to be observed that each Autonomous Republic is entitled to send 11 representatives to the Soviet of Nationalities. In 1951 there were 16 Autonomous Republics in the U.S.S.R. and 12 of them were within the R.S.F.R.S.

### **Autonomous Regions**

In 1951, there were 9 Autonomous Regions in the U.S.S.R. and 6 of them were within the R.S.F.S.R. Each Autonomous Region is entitled to send 5 deputies to the Soviet of Nationalities. The Autonomous Regions have less of autonomy in their affairs than the Autonomous Republics. Every Autonomous Region has its Executive Committee and a Soviet.

### **National Areas**

National areas are those areas which are inhabited by persons having distinct nationality of their own. Every National Area

has the right to send one representative to the Soviet of Nationalities. It is pointed out that the object of giving separate representation to the National Areas is to emphasize the fact that national minorities are not sacrificed in the U.S.S.R. but are guaranteed their existence, equality and protection.

### Local Organs of State Power

The organs of State powers in Territories, Regions, Autonomous Regions, Areas, Districts, Cities and rural localities (Stanitsas, Villages, Hamlets, Kishlaks, Auls) are the Soviet Working People's Deputies. The Soviets of Working People's Deputies of Territories, Regions, Autonomous Regions, Areas, Districts, Cities and rural localities (Stanitsas, Villages, Hamlets, Kishlaks, Auls) are elected by the working people of the respective Territories, Regions, Autonomous Regions, Areas, Districts, Cities or rural localities for a term of two years. The basis of representation for Soviets of Working People's Deputies is determined by the Constitutions of the Union Republics. The Soviets of Working People's Deputies direct the work of the organs of administration subordinate to them, ensure the maintenance of public order, the observance of the laws and the protection of the rights of citizens, direct local economic and cultural affairs and draw up the local budgets.

The Soviets of Working People's Deputies adopt decisions and issue orders within the limits of the powers vested in them by the laws of the U.S.S.R. and of the Union Republics. The executive and administrative organ of the Soviet of Working People's Deputies of a Territory, Region, Autonomous Region, Area, District, City or rural locality is the Executive Committee elected by it, consisting of a Chairman, Vice-Chairman, a Secretary and members. The executive and administrative organs of the Soviet of Working People's Deputies in a small locality, in accordance with the Constitution of the Union Republic, are the Chairman, the Vice-Chairman and the Secretary elected by it. The executive organs of the Soviets of Working People's Deputies are directly accountable both to the Soviets of Working People's Deputies which elected them and to the executive organ of the superior Soviet of Working People's Deputies (Articles 94—101).

### SUGGESTED READINGS

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|---------------------------|--|
| <i>Carter and Others</i>  | : The Government of Soviet Union.                |
| <i>Hazard, J. H.</i>      | : The Soviet System of Government, 1957.         |
| <i>Karpinsky, V.</i>      | : The Social and State Structure of the U.S.S.R. |
| <i>Mikhailov, Nikolai</i> | : Sixteen Soviet Republics.                      |
| <i>Strong, A. L.</i>      | : The New Soviet Constitution.                   |



## CHAPTER 23

### THE COMMUNIST PARTY

#### Position of Communist Party

Article 126 of the Constitution says that "the most active and politically conscious citizens in the ranks of the working class and other strata of the toilers unite in the *Communist Party of the U.S.S.R. which is the vanguard of the toilers in their struggle to strengthen the socialist system, and which represents the leading core of all organizations both public and State.*" According to Stalin, "Here in the Soviet Union, in the land of the dictatorship of the proletariat, the fact that not a single important political or organisational question is decided by our Soviets and other mass organizations without directions from the Party must be regarded as the highest expression of the leading role of the Party." According to Lenin, "In order to rule, an army of revolutionaries—Communists hardened in battle—is necessary. We have such, it is the Party. . . . were the Party to be set aside, there could in fact be no dictatorship of the proletariat in Russia." According to Webb, the Communist Party is "the most important part of the effective constitutional structure of the U.S.S.R." It "guides and gives general directions to the government." According to Prof. Munro and Ayearst, "No longer called upon to engage in conspiracy and revolution, the Communist Party of the U.S.S.R. has become the aristocracy of the State. While relatively important positions are available to non-Communists, especially skilled technicians, the most important posts not only in government but in industry, education, science and every other industry are more and more available to party members only"

#### Elimination of Other Parties

The Communist Party enjoys the position of monopolised legality in the State. No other party is allowed to exist in the U.S.S.R. However, it took a lot of time to eliminate the other parties from the political arena of the country. The first to be eliminated were the Mensheviks who were also responsible for the Revolution of 1917. After them came the turn of the Right and Central Social-Revolutionists. Last of all, the Left Social-Revolutionists were excluded from the Soviets. The result is that the Communist Party is united and monolithic. It is not considered as a "conglomerate of different groups." It possesses a single granite-like massive unity. It is "a unified militant organization held together by conscious, iron, proletarian discipline." Its strength is ascribed to "its coherence, unity of will, and unity of action."

#### Party Solidarity

The Communist Party does not tolerate factions, groupings, in-

dependent platforms and clusters of opinions. It also does not tolerate manifestations of deliberate aloofness and separatist activity within the party itself. Members of the Party are allowed to have discussions but once a decision has been arrived at by the Party, all opposition must stop and he who does not do so, is likely to meet the fate of Trotsky. The solidarity of the Party is emphasised by many writers and leaders. According to Stalin, "We are not liberals. For us, Party interests are higher than formal democracy." According to Trotsky, "Under no circumstances does intra-party democracy presuppose freedom of fractional groupings." According to Zinoviev, "We need a monolithism that is a thousand times greater than the one up to now. We cannot allow ourselves to go so far as to permit the freedom of factions or even the freedom of groupings." Again, "With a party that rules the State, freedom of action would mean freedom to form parallel governments in embryo." According to Radek, "Even a mere shadow of opposing itself to the Party signifies the political death of a fighter for socialism, his going over into the camp of the foreposts of counter-revolution."

### Democratic Centralism

The Communist Party represents a power pyramid erected on a territorial production basis. The Party organization is based on the principle of *democratic centralism* which involves the following four propositions:

1. The application of the elective principle to all leading bodies of the Party, from the lowest to the highest.
2. The periodical accountability of the Party bodies to their respective Party organizations.
3. Strict Party discipline and subordination of the minority to the majority.
4. The absolutely binding character of the decisions of the higher bodies upon the lower bodies.

### Party Organisation: Primary Party Organ

The "cell" or nucleus used to be the base in the organization of the Communist Party. Now it is called "the primary party organ." The primary party organ may be formed in any factory, village, store, office, or collective farm. The condition is that there must be at least three persons who subscribe to the party programme, submit to the decisions of the party and pay the membership dues. A primary party organ can be formed in any college, hospital or non-industrial establishment. In the case of large industries, there is a primary party organ for every department. It is stated that there are more than 150,000 primary party organs in the U.S.S.R. It is to be observed that admission to the primary party organs is restricted to workers by hand or brain. Soldiers and public officials are also welcomed. Every application for admission must be recommended by a specified number of Communists who have a good standing in the Party.



According to Party Rules of 1952, the following are the functions of the party units:—

(a) to conduct agitational and organizational work among the masses for the carrying out of Party appeals and decisions, with the support of the leadership of the primary press (house organs, wall newspapers, etc.);

(b) to recruit new members for the Party and to organize their political training;

(c) to organize the political education of party members and candidates and to see that they acquire a certain minimum knowledge of Marxism-Leninism;

(d) to assist the raikom or political department in all its practical work;

(e) to mobilize the efforts of the masses in the factories, State farms, collective farms, etc., for the fulfilment of the production plan; for the strengthening of labour discipline and for the development of socialist competition.

(f) to combat laxity and mismanagement in factories, State farms and collective farms;

(g) to develop criticism and self-criticism and to inculcate Communists in the spirit of an uncompromising attitude toward shortcomings;

(h) to take an active part in the economic and political life of the country;

The control functions of the primary Party organizations are described by the Party Rules as follows: "In order to enhance the role of the primary farms, collective farms, and machine-tractor stations, and their responsibility for the state of work in these establishments, these organizations are given the right to supervise management."

### **All-Union Congress**

Above the primary party organs are the district, provincial and regional party conventions. Each elects delegates to the one immediately above it. At the top of the pyramid is the convention or Congress of the Communist Party for the entire U.S.S.R. According to the rules, the All-Union Congress meets at least once in three years. However, no meeting of the All-Union Congress was held for a decade covering the period of the World War II and its aftermath. In all, there were 18 All-Union Congresses up to 1948. All-Union Congress are made up of representatives from the Union Republics, Autonomous Republics and other regional areas. The meetings are held in Moscow and are attended by all top leaders of the Communist Party. Reports are presented before it of the work already done by the Party and future programme. The All-Union Congress gives its approval to the work already done and to the future programme of the party. Ordinarily, a

session of the All-Union Congress does not last more than 2 weeks. The sessions are secret and not open to the public. The All-Union Congress has the power to amend and revise the programme and rules of the party. It elects the Central Committee and other Central Party Organs. It "determines the tactical line of the party on the principal questions of current policy." According to Towster, "A high consensus-building body or solemn ad hoc Party convention, as it were, it was called from time to time to proclaim anew basic principles of polity and lend the weight of its prestige to wide projects for the State's development and to the corresponding changes in socio-political arrangements." (*Political Power in the U.S.S.R.*, page 151.)

### **All-Union Party Conference**

With a view to filling in the gaps between the meetings of the All-Union Congresses, an All-Union Party Conference is summoned by the Central Committee from time to time. The intervals have varied. Sometimes, it was called once a year and sometimes it was called after an interval of two and a half years. In 1934, it was abolished altogether, but it was restored in 1939. The Conference consists of the representatives of local party organizations all over the country. It is a sort of a conclave of the heads and highest functionaries of the Local Party Organizations and also includes leaders from the Central Committee. The Conference usually lasts for three or four days. All decisions of the Conference must be ratified by the Central Committee. Its primary function is that of an opinion-tapping and effort-mobilizing agency. It helps the central leadership better to understand the conditions, sentiments and possibilities in the various localities.

### **Central Committee**

The Central Committee is elected by the All-Union Congress by a secret vote. According to the rule, "The Central Committee during the interval between congresses, directs the entire work of the Party, represents the party in its relations with other parties, organizations, and institutions, forms various Party institutions and guides their activities, appoints the editorial staffs of the central organs working under its control and confirms the appointment of the editorial staffs of the Party organs of large local organizations, organizes and manages enterprises of public importance, distributes the forces and resources of the Party, and manages the central funds. The Central Committee directs the work of the Central Soviet and public organizations through the Party groups in them."

In 1918, the Central Committee consisted of 15 members and 8 candidates. After that, its number began to increase. At present, it consists of 71 members and 68 candidates or alternates. The Central Committee meets from three to a dozen times in a year and carries out the decisions of the All-Union Congress. As the All-Union Congress does not meet for years, the Central Committee has to depend upon its own initiative as no guidance can be expected from the parent body.



As the size of the Central Committee is large, most of its work is delegated to its sub-committees and officers. The Central Committee has a President, a Secretary-General, many assistant secretaries and two sub-committees. One of these sub-committees is the Politbureau which overshadows the Central Committee itself. According to Towster, the "Central Committee, originally a small compact organ, and the deciding body of the Party, has become more and more of a ratifier rather than an out-and-out decision-maker, operating to confirm, periodically, important decisions, especially when a vital project is at stake or when lack of complete unity of point of view in the Politbureau, et cetera, make its sanction desirable."

### Politbureau or Presidium

The Politbureau was established as a permanently functioning organ by a resolution of the Congress in 1919. Very soon, it began to decide all questions of international and internal policy. No wonder, it came to be known as the "directing collective" or "kernel" of the Central Committee. According to Stalin, "The Politbureau is sovereign as it is, it is higher than all the organs of the Central Committee, except the plenum." Again, "The Politbureau is the highest organ not of the State but of the Party and the Party is the highest directing force of the State." According to another writer, the Politbureau is "the organ of operative direction of all branches of socialist construction." According to Ogg and Zink, "In reality, it is no exaggeration to say that the Politbureau is the keystone of the entire party structure and indeed of the U.S.S.R."

The Politbureau has a Chairman whose position cannot be ascertained correctly. Stalin occupied the position of the Chairman of the Politbureau for a long time. The Politbureau meets many times a week throughout the year. Sometimes its meetings are so long that they last until the early hours of the morning. The Politbureau has a large number of committees or commissions to give special attention to various matters. A staff of experts has been appointed to give technical advice to the members of the Politbureau.

It is true that the Politbureau is a sub-committee of the Central Committee which is subordinate to the All-Union Congress. However, it cannot be denied that the Politbureau is the key-stone of the entire party structure in the U.S.S.R. Although it cannot be stated with certainty as to what decisions have been made by the Politbureau, there is no doubt that the policy of the Communist Party and the U.S.S.R. is laid down by the Politbureau. All important economic, social, domestic or international problems are placed before the Politbureau for decision. The various ministries of the Federal Governments have to send their reports of work to the Politbureau. Lenin once complained that all matters, irrespective of their importance, were dragged to the Politbureau. His view was that "It is necessary to free the Politbureau and

C. C. of petty matters and increase the work of responsible officials. It is necessary that the People's Commissars should answer for their work and not, as is the case, that they first go to the Sovnarkom and then (appeal) to the Politbureau. Formally we cannot abolish the right to complain to the C.C. (i.e., the Politbureau), because our party is the sole government party. What is necessary here is to cut short every appeal in minor matters, but it is also necessary to raise the prestige of the Sovnarkom in this respect."

It is to be observed that the Politbureau was replaced by a Presidium by the 19th All-Union Congress held in October 1952. The Presidium was to consist of 25 members and some alternate members. It was made three times the size of the Politbureau. In addition to the leaders of the Communist Party, some members of the Central Planning Commission were also included in it. However, real power was in the hands of an inner group of four or five persons. Stalin was appointed the head of the Presidium.

### **Orgbureau**

The Orgbureau or the Organization Bureau was created in 1919 and abolished in 1952. Its membership varied from time to time. It ranged from 5 to 13 members. It consisted of the most influential members of the Communist Party, but it was less important than the Politbureau. Its jurisdiction extended to matters relating to the organization and operations of the Party. Most of its work was of a routine nature. There was no line of demarcation between the work of the Politbureau and the Orgbureau. In the course of time, the Secretariat of the Communist Party took over most of the work of the Orgbureau and no wonder it was abolished by the 19th All-Union Congress in 1952.

### **Central Headquarters**

Reference may also be made to the Central Headquarters of the Communist Party in Moscow. Stalin, in his capacity as the Secretary-General of the Communist Party from 1922 till his death, managed the whole show. There are a large number of sections and bureaux at the headquarters and every one of them is in charge of one department or the other dealing with matters not only within the U.S.S.R. but also with matters in various parts of the world. The Party headquarters have their departments corresponding to the departments of the State with a view to checking up the work of the State departments and also to guide them in certain matters. The Central headquarters are responsible for the working of the various branches of the Party in every nook and corner of the country. Most of the decisions of the State are made in the headquarters of the Communist Party.

### **Commission of Party Control**

The All-Union Congress elects not only the Central Committee but also an Auditing Committee and a Commission of Party Control. The Auditing Committee consists of 22 members and its function is to check up the finances of all the central party organs. The



Commission of Party Control consists of 22 members. It is described as "the collective keeper of the party conscience." It is the disciplinary arm of the Party. It keeps the lists of party membership. It inspects the meeting of the Committees and their organs to see that things are done according to the "Party line". It carried out the purgings and cleansings of the Party. It is the final court of appeal in cases of expulsion.' Since 1934, the Commission of Party Control is associated with the Commission of Soviet Control which is known as the Ministry of State Control.

### **Komsomols**

Reference may be made to some of the affiliated organizations of the Communist Party. These are the Komsomols, Pioneers and Octobrists. The Komsomols are associations of young people of both sexes between the ages of 15 and 26. Their total membership runs to millions. The Komsomols are called upon to master the teachings of Marxism and engage at all times in active aid to the Party in the execution of the programme and directives of the Party. The primary work of the Komsomols is to assist the Communist Party "in the matter of educating the youth and children in the spirit of Communism and of organizing the youth around the Soviet power." A Komsomol is considered "as a transmission belt that connects the Party with the masses and spreads the Party's influence to the masses of youth, the Komsomols serve as a mass training school which provides a feeder for the Communist Party and other organizations and institutions in the country. The Komsomols have their members in farms, factories and other institutions throughout the country.

The Communist Party controls the affairs of the Komsomols and also gets a lot of work done from them. The latter are required to spread education among the youth of the country. They have to set up and manage clubs, theatres, excursions and entertainments. They help the Communist Party to eradicate illiteracy from the country. During the war, the Komsomols were urged to mobilise the people in the defence of the country. The Komsomols have produced thousands of technical specialists for all branches of Soviet economy and they have helped in the execution of the various Five-Year Plans. In short, the Komsomols are the vital cogs in the Party structure and have played a very important part in all spheres of activity in the U.S.S.R.

### **Pioneers and Octobrists**

In addition to the Komsomols, there are two other Organiza-

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1. According to Party Rules of 1952, the Party Control Committee (a) verifies the observance of Party discipline by Party members and candidates; calls to account communists guilty of violating the party programmes and rules or of breaches of Party and State discipline, as well as violations of Party ethics; (b) examines appeals against the decisions of the Central committees of the Communist Parties of the Union republics and of territorial and regional Party committees concerning expulsions from the Party and Party censures; (c) has its representatives, independent of local Party bodies, in the republics, territories, and regions.



tions of younger boys and girls known as the Pioneers and Octobrists. The Pioneers admit boys and girls between the ages of 10 and 16. Their number is more than 13 millions. Children between the ages of 8 and 11 are admitted into organizations known as Octobrists.

### Comintern and Cominform

Reference may also be made to the Comintern and Cominform. The Comintern was formed in 1919. It was also known by the name of Third International. The main object of the Comintern was to spread Communism all over the world. Its battle cry was "world revolution". They aimed at overthrowing the capitalist system in all the countries of the world. The members of the Communist Party of Russia occupied important places within the Comintern and no wonder the activities of the Comintern were directed essentially in the interests of the U.S.S.R. The U.S.S.R. did not care for the protests of the other countries against the activities of the Comintern, but when she was involved in the total war against Hitler's Germany, and depended upon the help of the United Nations, the Comintern was dissolved in 1943 as a gesture of goodwill towards her Allies.

However, after the overthrow of the Axis Powers, the Cominform was formed by the U.S.S.R. Outwardly, it is merely a clearing house or Central Bureau of Communist organizations. Unlike the Comintern whose headquarters were in Moscow, the headquarters of the Cominform were first of all established in Yugoslavia and later on in Rumania. A. A. Zhadnov, a member of the Politbureau and a close associate of Stalin, was a prominent figure in the Cominform. Whatever the professions of the Communist Party regarding the objects of the Cominform and its connection with the Communist Party, it cannot be denied that the Cominform is an instrument for the promotion of world revolution.

### Membership of Party

Something may be said regarding the membership of the Communist Party. Lenin's view was that the membership of the Communist Party must be kept very strict. Only those persons were to be admitted into the Party who proved themselves to be confirmed Communists and were prepared to make any sacrifices for the cause of the Party. The requirements for admission to the Party are so high that very few persons qualify themselves to be the members of the Communist Party. Sometimes, a period of probation is prescribed. Even effort is made to find out whether the probationer has any selfish or ulterior motive. The probationer must not possess what is known as bourgeois mentality. Party membership is completely closed to certain categories of persons, e.g., private merchants, priests, speculators and kulaks. The period of probation is less for workers in factories and mines than for shopkeepers, civil servants and other intellectuals.

If it is difficult to get into the Communist Party, it is very



easy to get out of it. One has only to be slack in the performance of his duties as a member of the Communist Party and he is liable to be turned out. The criticism of the Party or disagreement with its decisions, may also result in expulsion.

### Duties of Members

The members of the Communist Party have to perform certain duties. They have to pay an initiation fee and also pay monthly subscriptions in proportion to their income. They have to accept unhesitatingly the "party line" of policy and action. They have to observe strict party discipline and carry out all the orders and instructions of the Party regardless of consequences. They have "to take an active part in the political life of the party and of the country." He has to "work untiringly to raise his ideological equipment to master the principles of Marxism, Leninism and the important political and organizational decisions of the Party and to explain those to the non-party masses." He has to "set an example in the observance of labour and State discipline, master the technique of his work and continually raise his production and work qualifications." He has to abstain from trade and other profitable occupations and thereby show that he does not care for profits. It is the duty of a member to show that he is an ideal person in many ways and thereby serve as a model to others. Spies are appointed to watch the activities of the members and no wonder sometimes abrupt action is taken against the members of the Communist Party who are suspected to be doing anything against the interests of the party.

According to Party Rules adopted at the 19th Party Congress in October 1952, it is the duty of a party member, "(a) to guard the unity of the Party in every way, as the prime condition of the Party's strength and might; (b) to be an active fighter for the fulfilment of Party decisions; (c) to be an example at work, to master the technique of his own job, constantly to increase his working skill, and in every way to guard and strengthen public Socialist property, as the sacred and inviolable basis of the Soviet order; (d) constantly to strengthen contact with the masses, to respond promptly to the desires and needs of the working people and to explain to the non-Party masses the meaning of the Party policy and decisions, remembering that strength and invincibility of our Party lies in its close, inseparable ties with the people; (e) to work at increasing his own political awareness, at mastering the principles of Marxism-Leninism; (f) to observe Party and State discipline, obligatory for all Party members alike; (g) to develop self-criticism and criticism from below, to expose and to seek to eliminate inadequacies in work and to struggle against ostentatious self-satisfaction and complacency in work; (h) to report to leading Party bodies, right up to the Party Central Committee, on shortcomings in work, regardless of the persons involved; (i) to be truthful and honest before the Party and never permit concealment or distortion of truth; (j) to keep Party and State secrets and to display political vigilance, remembering that the vigilance of Communists is necessary in every sector and in all circum-



stances; (k) at any post entrusted to him by the Party, to carry out without fail the Party directives on the correct selection of cadres on the basis of their political and working qualifications. Violating these directives, selecting workers on the basis of friendship, personal loyalties, local ties, or kinship is incompatible with Party membership."

The members of the Communist Party enjoy many privileges. They occupy the most important jobs in the country. They enjoy a very high status with the society. They are looked upon as the leaders of the people.

It is to be observed that before October 1952, the word "Bolshevik" was used along with the name of the Communist Party. It was decided by the All-Union Congress of the Communist Party in October, 1952 that word "Bolshevik" should be dropped in future. There was no necessity to maintain the name merely for historical reasons.

The membership of the Communist Party has increased in course of time. In October 1917, its total membership was 2,40,000. In October, 1952, it was 68,82,145.

The Communist Party is the real power behind the Government, the army, the industries, the police, trade-unions, co-operatives, youth organisations, etc. It is difficult to distinguish between the Communist Party and the Soviet Government. As a matter of fact, most of the high officials in the Soviet Government also occupy important places within the Communist Party. It is to be observed that the *Izvestia* is the official organ of the Soviet Government and the *Pravda* is the official organ of the Communist Party.

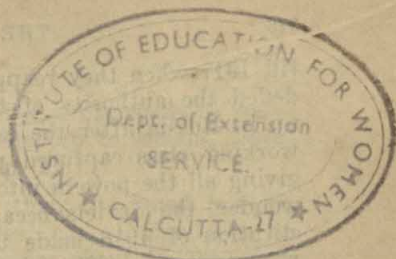
### SUGGESTED READINGS

- |                        |  |
|------------------------|--|
| <i>Fainshold, M.</i>   | : How Russia is Ruled?                           |
| <i>Leites, N.</i>      | : The Operational Code of the Politburo, 1951.   |
| <i>Scott, D. J. E.</i> | : Russian Political Institutions.                |
| <i>Strong, A. L.</i>   | : The New Soviet Constitution.                   |
| <i>Schapiro, L.</i>    | : The Communist Party of the Soviet Union, 1960. |
| <i>Schueller, G.</i>   | : The Politbureau, 1951.                         |
| <i>Moore, B.</i>       | : Soviet Politics, 1950.                         |
| <i>Towster, J.</i>     | : Political Power in the U.S.S.R., 1948.         |



## CHAPTER 24

### THE SOVIETS



#### Their Importance

According to Stalin, "In our Soviet country we must evolve a system of Government that will permit us with certainty to anticipate all changes, to perceive everything that is going on among the peasants, the nationals, the non-Russian nations and the Russians; the system of supreme organs must possess a number of barometers which will anticipate every change, register and forecast...all possible storms and ill-fortune. That is the Soviet system of Government." To quote Stalin again, the Soviets are the "State form of the dictatorship of the proletariat." Constitutionally, the Soviets are designated as the political foundation of the U.S.S.R. and they have given their name to the Soviet regime from its very beginning. The various republics are known as Soviet republics and their Union is also called the Soviet Union. The entire structure of the government is an hierarchy of Soviets.

According to Article 94 of the Constitution, it is a constitutional necessity for every village, city, district, region, autonomous republic, Union republic and the U.S.S.R. to have a Soviet. The Soviets constitute the organs of Soviet authority and the government carries on its work through them.

#### What is a Soviet?

A Soviet is a council of representatives chosen by the workers employed in a factory, or the soldiers in a regiment or the peasants in a village. A Soviet represents only the workers, peasants and soldiers and not the capitalists, landlords, shopkeepers, etc. Soviets play a dual role. They are not only the agency through which the labouring masses are given a share in the administration of the country, but they are also the organs through which the ideals, programme and orders of the Communist Party can be executed.

#### Historical

"Soviet" is a Russian word for "Council". The origin of the idea of Soviets can be traced to early 19th century in England when a follower of Robert Owen put forward a plan which dispensed with the House of Commons and proposed to organize the government on the basis of councils representing the various trade unions.

Soviets made their appearance in Russia in 1905 to protest against the tyrannical regime of the Czar. They represented the workers and soldiers. They were militant and they forced the Czar to issue the October Manifesto of 1905 by which certain concessions were given to the people. As soon as the Czar found an opportunity, he crushed those Soviets and nothing was heard of them

till 1917 when they reappeared as "the organs of rebellion." They defied the authority of the Provisional Government which was set up in Russia after the overthrow of the Czarist regime. When the working class captured power in October 1917, Lenin's slogan of giving all the powers into the hands of the Soviets materialized. No wonder, the Soviets became the organs of State power. The Constitution of 1918 made the Soviets the basic organ of government in every area. There were elections in four stages. The electors chose their village and city Soviets. The plenums of the village and city Soviets elected their own executive organs as well as delegates to the District Congress. The District Congress elected a District executive Committee and delegates to the territorial or regional Congress. The territorial and regional Congress elected their own Executive Committees and elected their delegates to the Congress of Soviets of the constituent Republic and to the All-Union Congress of Soviets. This state of affairs continued up to the enforcement of the Constitution in 1937.

### **Soviet Links**

Under the new Constitution, there are six basic links in the structure of the local Soviet organs. Those are the Soviets of the territories and regions, autonomous regions, areas, districts, cities and villages. There are no more Congress of Soviets. Their place has been taken by the Soviets of toilers' deputies who are elected for a term of two years by a system of direct election on the basis of secret ballot. All elections are conducted on territorial basis and no distinction is made between village Soviets and city Soviets. Every electoral area sends only one deputy to the Supreme Soviet of the U.S.S.R.

It is pointed out that there are about 70,000 Soviets in the U.S.S.R. and they perform a large number of functions. According to Webb, "The Soviet Government is not content that the Village Soviet should deal only with the questions of local or village importance; and the newest decree insists that every Solo-Soviet should consider and discuss also affairs of rayon, oblast republic and even U.S.S.R. importance. It is laid down, in a general way, that, within its territorial limits, the Village Soviet has control of the execution, by all citizens and officials, of the laws or instructions of the Government. The Village Soviet is to prevent all interference with the execution of the measures taken by the Central Government or with the policy from time to time prescribed. The Village Soviet may, within its wide competence under the Statute, issue obligatory ordinance and impose administrative penalties and fines. It may establish Village Courts, with jurisdiction over disputes as to property or conditions of employment and over petty offences. The Village Soviet is to instruct, to supervise, to inspect, to audit, to insist on the fulfilment of all obligations, and on obedience to all laws and regulations. Moreover, it is equally part of the duty of the Village Soviet to keep an eye on the operations of the State manufacturing and trading departments in the locality. Within the village itself, there is practically nothing that the Soviet may not



organize, regulate or provide at public expense, from roads to water supplies, through club-houses and dance floors, up to schools, theatres and hospitals." (*Soviet Communism*, p. 21.)

The urban Soviets are usually larger than the rural Soviets. They also make use of Standing Committees, e.g., Committees on public health, education, finance, etc. There are about 10,000 urban Soviets in the U.S.S.R.

The Constitution provides that the Soviets "adopt decisions and give orders within the limits of the rights granted to them by the laws of the U.S.S.R. and the Union Republic." They "direct the activity of the organs of administration subordinate to them, ensure the maintenance of State order, the observance of the laws, and the protection of the rights of citizens, direct the local economic and cultural construction and establish the local budget." The Soviets choose executive committees consisting of a Chairman, Vice-Chairman, a secretary and members. The obligatory departments of the executive committees are those of finances, trade, popular education, health, social security, a planning commission, etc.

Towster refers to the following main characteristics of the Soviets:—

1. A pronounced mass character.
2. An international quality.
3. A structure facilitating proletarian leadership of the masses.
4. The combination of legislative and executive functions in the same State organs.
5. The wide exercise of the right of recall with regard to delegates to the Soviets.
6. An army converted from an instrument of oppression into one of liberation.
7. A singular capacity to attract mass organization "into constant and unconditional participation in the administration of the State."

Regarding the mass character of the Soviets, Stalin remarked thus: "Wherein lies the strength of our State apparatus? In the fact that through the Soviets it connects the government with the millions of masses of workers and peasants. In the fact that the Soviets are a school of governing for tens and hundreds of thousands of workers and peasants. In that the State apparatus does not fence itself off from the millions of the popular masses, but is fused with them through a vast multitude of mass organizations, all kinds of Commissions, Sections, 'Consultations, delegates' assemblies, etc., which encompass the Soviets and prop up thereby the organs of Government."

### **Soviets and Party**

As regards the relationship between the Soviets and the Com-

munist Party, reference may be made to some of the views expressed from time to time. A resolution of the Eighth Party Congress (1919) ran thus: "The Communist Party poses as its task the conquest of a most decisive influence and complete direction in all the organizations of toilers: trade unions, co-operatives, village communes, etc. The Communist Party seeks especially the realisation of its programme by its complete dominance in the contemporary State organizations—the Soviets. By practical, daily, self-sacrificing work in the Soviets, by putting forth its most stable and devoted members for all Soviet posts, the R.C.P. must conquer for itself undivided political dominance in the Soviets and actual control over all their work.

"But the functions of the Party collectives must on no account be confused with the functions of the State organs—the Soviets. Such confusion would produce fatal results, especially in military affairs. The party must carry out its decisions through the Soviet organs within the frame of the Soviet Constitution. *The Party should endeavour to guide the activity of the Soviets, not to supplant them.*" A resolution of the Party Congress in 1922 provided thus: "Keeping for itself the general guidance and direction of the entire politics of the Soviet State, the Party must carry out a much more precise demarcation between its own current work and the work of the Soviet organs, between its own apparatus and that of the Soviets. Such a systematically executed demarcation should secure more systematic consideration and decision of economic questions by the Soviet organs, at the same time raising the responsibility of every Soviet official for the work entrusted to him, and, on the other hand, make it possible for the Party to concentrate properly on the basic Party work of general guidance of the work of all State organs." According to a statement of Stalin made in 1926, the Party "leads the Soviets, with their national and local ramifications, but it cannot and should not replace them by itself." After 1929-30, there was an increasing functional fusion of the Communist Party and the government. In 1941, Stalin became the Chairman of the Council of People's Commissars and thereby combined in himself both the headship of the government and the Communist Party.

### SUGGESTED READINGS

- |                  |   |
|------------------|---|
| Batsell, W. R.   | : Soviet Rule in Russia.                |
| Gibberd          | : Soviet Russia.                        |
| Mikhailov, N.    | : Land of the Soviets.                  |
| Rostow and Lewin | : The Dynamics of Soviet Society, 1954. |
| Williams, A. R.  | : The Soviets.                          |
| Arkhangel, S. N. | : Land of Soviets.                      |



## CHAPTER 25

### THE CANADIAN CONSTITUTION

According to Lord Bryce, "The study of popular Government in Canada derives a peculiar interest from the fact that while the economic and social conditions of the country are generally similar to those of the United States, the political institutions have been framed upon English models, and political habits, traditions and usages have retained an English character".

The present constitution of Canada is to be found in the British North America Act which came into force on 1st July, 1867. That Act was amended in 1915. It is true that the Act of 1867 still forms the fundamental law of the country but the developments that have taken place from that time onward, have absolutely changed the state of affairs. It is rightly pointed out that while in 1867 Canada was given the constitutional status of a colony, she at present exercises the constitutional usage of sovereign nationhood. This change was brought about by the Imperial Conferences held from time to time. The Balfour Declaration defined the position of the dominions and the same was affirmed in 1931 by the Statute of Westminster.

#### Characteristics of the Constitution

(1) The fathers of the Canadian Constitution had before them both the British and American experiments in the field of administration and no wonder they borrowed from both the Constitutions what they considered to be desirable and expedient. Thus the parliamentary system of Government was borrowed from England and not the presidential system of the United States. Likewise, the unitary system of England was not adopted and the federal system of the United States was adopted. There does not seem to have been any hesitation in copying the names of the political institutions. Thus, the words Parliament and House of Commons were copied from England and the Senate from the United States.

(2) Unlike Great Britain, Canada has essentially a written constitution which is to be found partly in a series of Acts known and quoted as British North America Acts, 1867-1915, partly in the Canadian Statutes, partly in common law and partly in the judicial decisions. The Constitutions of the provinces do not form a part of the dominion constitution and they are regulated by the Provincial Acts subject to the limitations enforced by the British North America Acts. English common law is to be found in Ontario and French common law in Quebec. The prerogatives of the Crown are based on English common law. Judicial pronouncements have played an important part in determining the nature of the constitution.

The written Constitution of Canada has also its unwritten

parts. According to Dawson, "The unwritten portion of the Canadian Constitution thus includes such matters as the following all (and more) of which are necessary to an understanding of the nature of the executive power—

- (1) that today on virtually all questions the Governor-General does not act according to his own judgment or on his own responsibility, but on the advice of his Council;
- (2) that this Council is not the Council mentioned in the British North America Act but only a part of that Council acting in the name of the whole;
- (3) that the active part of the Council is the Cabinet, a body never mentioned anywhere in the Act;
- (4) that this part of the Council is chosen by the Prime Minister;
- (5) that such a person as a Prime Minister, the most important political figure in Canada, does not appear in any part of the written Constitution, indeed he is mentioned only casually in one or two statutes;
- (6) that the Prime Minister and his Cabinet must always have the support of the House of Commons and that all members of the Cabinet including the Prime Minister must have seats in that body or the Senate;
- (7) that the Cabinet stays in office largely because of its steady support from a political party;
- (8) that most of the Cabinet members are heads of the executive departments;
- (9) that almost all the above are reproduced in miniature in the provincial Governments"

(3) Canada has a *federal Constitution*. According to Prof. Kennedy, there are four features of the Canadian federal system. The first feature is that the Dominion Parliament is not a delegation from the Imperial Parliament or from the provinces. It has full and complete powers within its jurisdiction. The second feature is that the provincial Parliaments are not delegations from the Imperial Parliament. The third one is that the provincial Parliaments are not delegations from the Dominion Parliament. The last feature is that the Provinces remain independent and autonomous. They possess the executive power "before confederation minus the power surrendered at confederation". The result is that Canada is essentially a federation. The central National Government is not at all a delegation, the provincial Governments are in no sense municipal. The national and local Governments exercise co-ordinate authorities and are severally sovereign, within the sphere specifically and generally or by implication constitutionally granted to them.

The framers of the Canadian Constitution divided the legislative powers into four divisions. In the first division are to be



found those subjects which are given exclusively to the Dominion Parliament. Those powers are to be found in Section 191 of the British North America Act. To the second category belong those powers which apply exclusively to the provinces. Those are to be found in Section 92 of the Act of 1867. To the third division belong those powers on which laws can be passed both by the federal Government and the provincial Governments. Section 95 deals with those powers. The fourth division deals with education and Section 93 deals with it. According to Kennedy, "The federal residuary power is thus curtailed by the provincial residuary power and power *de jure* can be exercised only when the interests of Canada as a whole are clearly involved. In other words, when the federal authority legislates on any subject outside the twenty-one enumerated subjects of Section 91, it can claim no power from that section to legislate on any subject which is, in essence or scope, local or provincial. Everything local is given to a province, whether specifically or generally, and the dominion cannot *a priori* assume that its residuary power allows it to interpret things substantially local in dominion terms. The federal legislative power can only be called into action outside the enumerated subjects over which it has exclusive authority, when the particular matter on which it is exercised lies outside the specific and general powers granted to a province. Of course, a matter may originate locally, like a hydro-electric scheme, but later on may assume national importance. When such a condition is constitutionally established, the dominion can legislate and can over-ride provincial legislation, if there is a clash. The dominion, too, may, under residuary power, incidentally interfere with a local matter. For example, the power to make laws for peace, order and good government of Canada must almost inevitably affect provincial control over property and civil rights. But in actual substantial legislation, the dominion must establish the validity of the formula, 'something done for the dominion in the interests of the dominion.'"

Canada has a strong federal system and that is partly due to longer list of the subjects under the exclusive jurisdiction of the Dominion Parliament. Moreover, Canada had a unitary government at the time of its being transformed into a federation. Consequently, unlike the United States or Australia where the federating states were independent, the Central Government of Canada gave away some powers to the provinces and the rest remained with the Centre. Moreover, the Lieutenant-Governors of the provinces are appointed by the Dominion Government and they are not elected by the people like the governors of the United States. As the Federal Government can appoint and recall a Lieutenant-Governor, the Federal Government comes to have a say in the affairs of the Provincial Government. In the United States, the members of the Senate are elected by the people, and, consequently, the Senate supports the rights of the States. However, in the case of Canada, the Senators are appointed by the Governor-General on the recommendation of the Prime Minister. The result is that the Senate is not and cannot be the guardian of the



interests of the provinces of Canada. The Minister of Justice of Canada has the power to disallow a provincial act within one year after its receipt from the Lieutenant-Governor of a province. This power gives control to the Federal Government to interfere into the affairs of a province. It is true that there is a school which is opposed to the exercise of powers of disallowance on the ground that the provinces are sovereign in their own spheres and the Federal Government should have no right to interfere with the will of the people of the provinces, but there are others who hold the view that the vote of a Dominion Government is not absolute in cases of hardship, inequality or injustice. The exercise of this power depends upon the attitude of the individual Minister of Justice or the party to which he belongs. As the Federal Government was made deliberately strong, there has been a general tendency in recent times to interpret the constitution in such a way as to give to the provinces a virtual residuum of power under "property and civil rights".

(4) Unlike the United States which has a very rigid constitution, the method of constitutional amendment in Canada is a simple one. An amendment in the Canadian Constitution can be made by the British Parliament when the same has been approved of by the Dominion Parliament and a majority of the provincial legislatures. The British Government has not refused any amendment if it is supported by the Dominion and Provincial Legislatures.

(5) Canada is a sovereign independent State associated with others of equal status in the British Commonwealth of Nations. She has practically complete control over her internal and external affairs. This was made complete when the taking of civil appeals to the Judicial Committee of the Privy Council was abolished in 1949.

### Comparisons

(1) As regards the method of amendment of the Constitution, the Canadian Constitution can be amended by the British Parliament. In the case of the United States, the constitution can be amended only if the amendment is passed by a two-thirds majority of the Congress and three-fourths of the State Legislatures. In the case of India, in certain cases, the Indian Parliament can amend the constitution without the approval of the State legislatures, but in certain cases their approval is absolutely necessary.

(2) Both in India and Canada, the Federal Government was deliberately made strong. The residuary powers are left with the Federal Government and important subjects are also with the Federal Government. In the case of the United States, the states were made very strong at the beginning. However, there has been a tendency to strengthen the hands of the Federal Government in the United States.

(3) In India and the United States, the Supreme Court is the interpreter of the constitution and can say the last word on



it. However, in the case of Canada, the Judicial Committee of the Privy Council was the highest court of appeal in criminal cases up to 1933 and civil cases up to 1949.

(4) In the United States, all states, whether big or small, have equal representation in the Senate. However, that is not so in India and Canada. In India, some states send many representatives to Rajya Sabha while others send very few. Likewise, in Canada, some provinces send as many as 24 members to the Senate and others only 6 or 10. In the United States, the members of the Senate are directly elected by the people of the states. In India, the members of Rajya Sabha are partly indirectly elected by the state legislatures and partly nominated. In Canada, all the members of the Senate are nominated for life.

(5) The United States has a presidential form of government in which the executive is not responsible to the legislature. Both in India and Canada, there is a parliamentary form of government. In India, the President of India is the nominal executive and in Canada the Governor-General is the nominal executive.

(6) In the United States, there is a system of federal courts, viz., the Supreme Court of America, the Federal Courts of Appeal and the Federal District Courts. However, that is not so in India or Canada. There are no federal courts as such. There is only one Supreme Court and the rest of the judicial work is left to the states or provinces.

### The Crown

The executive of Canada consists of two parts, viz., nominal and real. The nominal executive is the Crown and the Governor-General, while the real executive is the Cabinet. Section 9 of the British North America Act provides that the executive government and authority of and over Canada, is vested in the Queen. Likewise, the Governor assents to the bills in the name of the Queen. The Crown is the symbol of Imperial unity and forms the golden link that unites the dominions with the mother-country.

### Governor-General

The Governor-General is the representative of the Crown in Canada. Formerly, the British Government had full discretion to appoint anybody as the Governor-General of Canada. However, at present, the appointment is made by the British Government in consultation with the Dominion Government. The Dominion Government has also the power to demand the dismissal or recall of a Governor-General, although ordinarily he continues in office for five years. He receives a salary of £10,000 a year.

As a representative of the Crown, the Governor-General summons, prorogues and dissolves Parliament. These powers are exercised on the advice of the Cabinet. Although the Governor-General is the head of the executive, he always acts on the advice



of the ministers who alone are responsible for the administration of the country. The Governor-General neither takes part in the deliberations of the ministers nor in the execution of their policy. Lord Argyll was the first Governor-General who stopped attending the meetings of the Cabinet and his example has been invariably followed by his successors. The Governor-General stands above all parties and his attitude towards all issues is absolutely non-partisan. He neither possesses the dignity and prestige nor the influence of the Queen of England.

The Governor-General appoints Canadian representative to the United Nations and concludes certain minor treaties, between Canada and other countries, which are not signed by the Crown directly. He appoints and removes from office the Lieutenant-Governors and Speaker of the Senate. He appoints the judges of the Supreme Court and Provincial Courts. He can disallow an act of a provincial legislature.

He is the Commander-in-Chief of the land, naval and air forces of Canada. He exercises the prerogative of pardon and reprieve. He can preserve a bill for the approval of the Crown.

The Governor-General takes away from the shoulders of the Prime Minister many tiresome routine tasks of social and ceremonial nature. He is sometimes useful in general diplomatic relations with the United States. He may be able to furnish the cabinet with an unbiased and helpful advice on matters of state. One of his most important functions is to select a new Prime Minister whenever the office becomes vacant.

The Governor-General possesses a reserve power of interference, although the occasion for its exercise may not arise even once in a generation. The Governor-General can interfere when the same is necessary to protect the normal working of the constitution. If the Prime Minister accepts a bribe and refuses either to resign or advise the Governor-General to summon Parliament to deal with the matter, the Governor-General can dismiss him from office. Likewise, if a Prime Minister was allowed to dissolve the House of Commons but was returned with a minority of members, the Governor-General can refuse to dissolve the House once again even if he is asked to do so by the old cabinet. The use of such a power may be rare but the mere existence of such a power and the knowledge that it can be invoked is sufficient to prevent the occasion for its exercise arising at all.

### Privy Council

The British North America Act created a Privy Council to advise the Governor-General in the administration of the country. The man who is appointed a Privy Councillor retains his membership for life. The Privy Council never meets as a body and its work is done by the Cabinet. The difference between the Cabinet and the Privy Council is that while every member of the Cabinet is a Privy Councillor, every Councillor is not a Cabinet



member. In other words, the Cabinet can be called a sub-committee of the Privy Council.

### The Cabinet

The real power in Canada rests with the Cabinet, which ordinary consists of the Prime Minister and 18 other ministers. The cabinet system works on the lines of England. After a general election or a serious defeat of the ministry in the House of Commons, the Governor-General invites the leader of the majority party to form the ministry. As in England, there is the collective responsibility of all the ministers. All ministers have to support one another. They cannot display their differences in the public. A cabinet minister, who cannot support his colleagues in any matter decided at a meeting, has to resign as soon as the matter is put before Parliament. He has the privilege of explaining his resignation and his first statement must be made there so that the Prime Minister can reply. Resignations have actually been demanded by the Prime Minister from their colleagues on the ground that they differ from other members of the cabinet. The Prime Minister can approach the Governor-General to dissolve the House of Commons and the convention is that the Governor-General must agree to the dissolution of the House of Commons. The refusal of the Governor-General in 1926 created a great sensation and it is certain that the same will not be repeated again. This power has strengthened the hands of the cabinet. Another rule is that if a cabinet is defeated in the House of Commons on any important issue, it must either resign or appeal to the electorate by demanding a dissolution of the House of Commons. The proceedings of the cabinet meetings are kept as a guarded secret. The Governor-General does not attend the meetings of the cabinet. However, all communications which can be called official, come to him through the cabinet and all Orders-in-Council are submitted to him personally. He is entitled to receive the full confidence of his ministers when they ask him to act in any official capacity.

As in England, the Canadian Cabinet is the real driving force in the administration of the country. Its powers have grown enormously. On account of its hold over the House of Commons, it is always sure to place on the Statute book all those measures which it considers to be essential for the efficient administration of the country and the well-being of the individuals and society. According to Dawson, the Cabinet links together the Governor-General and the Parliament. It is virtually, for all purposes, the real executive. It formulates and carries out all executive policies. It is responsible for the administration of all government departments. It prepares by far the great part of the legislative programme and exercises almost exclusive control over all matters of finance. The cabinet is the servant of the Governor-General. But, in practice, it tells him what to do. It is also the servant of the House of Commons, and yet it leads and directs the House and is in a very real sense the master of that Chamber.

## Prime Minister

The Prime Minister is the leader of the majority party in the House of Commons. After a general election or a serious defeat of the ministry in the House of Commons, the Governor-General invites the leader of the majority party to form the ministry. However, unlike England, the job of the Prime Minister is rather difficult. He has to take into consideration very many factors at the time of forming the ministry. He has to give proper representation to French Canada, Roman Catholic population of Canada that is not French, the English-speaking population of Quebec, and the other eight provinces. Ordinarily, three cabinet ministers are taken from French Canada, three from Ontario, and at least one from each of the provinces of Nova Scotia, Alberta, British Columbia, New Brunswick, Manitoba and Saskatchewan. No convention demands the selection of any minister from the Senate. Almost all the ministers are taken from the House of Commons. The Prime Minister has to take into consideration the special claims of the financial interests of Montreal and Toronto in the selection of the ministry of Finance.

A successful Prime Minister must possess the great art of reconciler. He must be a shrewd politician who knows how to manage his party and colleagues. He presides over the meetings of the cabinet and gives the lead in the discussion. The members of the cabinet accept his decisions, but he cannot afford to overlook or completely ignore their susceptibilities. He has to carry with him other ministers who are his colleagues. He has to see that they all work in team spirit. There is no question of dictation from one to another. They all have to pull their weight together. If a minister refuses to fall in line, the Prime Minister can remove him. Homogeneity has to be maintained at any cost.

The Prime Minister can approach the Governor-General for the dissolution of the House of Commons. He has to recommend to the Governor-General the names of the persons who have to fill in the vacancies created by the death or removal of any member of the Senate. The Lieutenant-Governors of the provinces are appointed on his recommendation. He prepares the timetable of the House of Commons.

According to Dawson, the power of the Prime Minister over the Cabinet is potentially enormous. However, the degree and manner in which it is used will depend in large measure on the leader himself. The Prime Minister must know when to command, when to persuade and when to give way. He can never be really independent of his cabinet any more than he or his colleagues can ever be really independent in the House of Commons. The Prime Minister occupies a position of respect and his words carry weight.

## The Canadian Legislature: House of Commons

The Canadian Parliament consists of two Houses, *viz.*, the House of Commons and the Senate. The House of Commons is



the Lower House. Its members are elected by the people on the basis of adult franchise for a period of five years. However, the House of Commons can be dissolved earlier if the Prime Minister asks the Governor-General to do so.

The membership of the House of Commons is not stationary. It varies after every ten years according to the changes in population as shown by the census figures. The representation for Quebec is fixed by the British North America Act at 65, and this figure cannot be changed. For the representation of other provinces, the following formula is laid down in the Constitution:

"There shall be assigned to each of the other provinces (other than Quebec) such a number of members as will bear the same proportion to the number of its population (ascertain at such census) as the number of 65 bears to the number of population of Quebec (as ascertained)."

Originally, the House of Commons consisted of 181 members. However, according to a new representation Act passed in 1952, the House of Commons has 265 members. The representation of the various provinces is as follows: 85 members come from Ontario, 75 from Quebec, 12 from Nova Scotia, 12 from New Brunswick, 14 from Manitoba, 22 from British Columbia, 4 from Prince Edward Island, 17 from Saskatchewan, 17 from Alberta, 7 from New Foundland and one each from Yukon territory and MacKenzie District of the North-west territories.

Both the House of Commons and the Senate have equal powers. Bills can be introduced in either House. However, it is specifically provided that money bills can originate only in the House of Commons. In England, the money bills can only be introduced by the Cabinet and not by private members.

The procedure for the passage of the bills is the same in Canada as in England. A bill has to go through five stages, viz., first reading, second reading, committee stage, report stage and the third reading. The consent of both the Houses is required for passing the bill. The House of Commons has a Committee of the Whole and 11 Standing Committees.

The Canadian House of Commons is strong because most of the cabinet members are taken from it. The Prime Minister also belongs to this House. A vote of no-confidence passed in this House against the ministry brings about its fall and the most important legislation is discussed in this House. It is for this reason that the ambitious men of Canada flock to this House than to the Senate.

### The Senate

The Canadian Senate consists of 102 members. They are nominated for life by the Governor-General on the advice of the Prime Minister. Dr. Keith rightly points out that membership of the Senate is the reward for party services, normally in old age. It is given to generous benefactors of party funds or to business-

men whose presence there is expected by some great corporations to further their interests in legislation. As a rule, appointments are made purely on party lines. If a Liberal Ministry is in power, it will appoint only the Liberal members to fill in the vacancies in the Senate. The result is that if a party remains in power for a long time, most of the members of the Senate come to belong to that party. The result is when the same party is defeated at the polls, and becomes a minority in the House of Commons, it still retains its majority in the Senate. In such a situation, the Senate is in a position to put the ministry in a very awkward position. However, the ministry can afford to ignore the Senate.

It is true that a Senator is appointed for life, but he can lose his seat for any of the following reasons:—

- (1) If for two consecutive sessions of Parliament, he fails to attend the Senate
- (2) If he takes an oath or make a declaration of allegiance to a foreign power or does an act whereby he becomes a subject or citizen of a foreign power.
- (3) If he becomes bankrupt or insolvent or a public defaulter.
- (4) If he is attainted of treason or convicted of felony or any infamous crime.
- (5) If he ceases to be a resident of the province for which he was appointed a member of the Senate by shifting to some other province.
- (6) If he resigns his seat in the Senate. The powers of the Senate are not defined by law. The only provision is that all appropriation bills or taxation bills must originate in the House of Commons. However, the Senate has successfully established its claim to amend money bills on certain occasions. In 1912, the Senate rejected the money bill. In 1923 and 1924, it rejected the proposal to build branches of the Canadian National Railway. In 1925, it drastically amended the bill which made appropriations to relieve sufferers from the disaster affecting the Home Bank and the House of Commons had to give way.

As regards ordinary bills, the Senate has equal powers with the House of Commons. Any general bill can be introduced in the Senate, and also rejected by it when it comes from the House of Commons. In 1935-36, the Senate was hostile to the bills introduced by MacKenzie King.

In the case of a deadlock between the Senate and the House of Commons, the Crown can, on the advice of the Governor-General, direct that four or eight members be added to the Senate. The responsibility ultimately rests on the shoulders of the cabinet as the Governor-General can do so only on the advice of the Cabinet.



The one great defect in the Senate is that it does not examine the bills on merit, but makes its decisions on purely party grounds. The result is that its decisions do not enjoy respect. The Canadian Senate is not the home of elder statesmen, whose decisions must carry weight with the people.

Dawson points out that the Senate revises and checks legislation sent up from the House of Commons. It conducts occasional investigations of undoubted merit. It takes by far the greater part of the load of private bill legislation from the over-worked House of Commons. However, it has not been successful in safeguarding the rights of the provinces or the minorities. Its attitude on social legislation has often been criticised as reactionary.

The Canadian Senate has been severely criticised. Sir George F. Foster points out that nobody in the press takes any trouble whether the Senate has any ideas and what their effect is on various aspects of legislation. Sir J. A. R. Marriot points out that the Canadian Senate attempts to combine several principles which if not absolutely contradictory, are clearly distinct. The result is that it has never possessed either the glamour of an aristocratic and hereditary Chamber or the strength of an elected Assembly or the utility of a Senate representing the federal as opposed to the national idea. Devised with the notion of giving some sort of representation to provincial interests, it has, from the very beginning, been manipulated by party leaders to sub-serve the interests of the government in power. According to Kennedy, the Canadian Senate has become almost a cipher, surrounded with derisive State and the trappings of impotence. The Senate has been described as the pocket borough of the ministry. It is also pointed out that the Senate has fallen in the desuetude. It has become in a way a mere recording body, a "me too" machine. It is also pointed out that instead of being a revisory chamber, the Senate has become a divorce court. Divorce bills may go up to 40 or 50 in each session and the precincts of the Senate can be seen full of women lobbying against or for divorce.

### The Judiciary

There are two Federal Courts in Canada and those are the Supreme Court and the Court of Exchequer and Admiralty. The Court of Exchequer and Admiralty was established in 1875 as a part of the Supreme Court. However, today it is a separate court governed by the Exchequer Court Act of 1952. It consists of a President and four puisne judges appointed by the Governor-General in Council. They hold office during good behaviour and can be removed by the Governor-General on an address of the House of Commons and the Senate. The judges must retire at the age of 75. The Court sits in Ottawa and at the other places when so required. It has jurisdiction over cases involving claims against the Crown in Canada. It also exercises admiralty jurisdiction.

The Supreme Court of Canada was established in 1875, but

is now governed by the Supreme Court Act of 1952. It consists of the Chief Justice of Canada and eight puisne judges. They are appointed by the Governor-General on the advice of the ministry. They hold office during good behaviour. However, they can be removed by the Governor-General on an address from both Houses of Parliament. Every judge of the Supreme Court must retire at the age of 75. The headquarters of the Supreme Court are at Ottawa.

The Supreme Court has appellate jurisdiction both in civil and criminal cases. An appeal can be taken to the Supreme Court in a criminal case if the court of appeal of the provinces is not unanimous in its decision. In civil cases, appeals lie to Supreme Court from all decisions given by the highest court of final resort in the provinces. This jurisdiction varies in case of different provinces. However, it is regulated by federal law and the provinces can neither increase nor reduce this jurisdiction of the Supreme Court. The Supreme Court also hears cases of appeals relating to election disputes. It has also advisory jurisdiction. The Governor-General can seek its advice on any question of law or fact. The Supreme Court also possesses the power of judicial review. It has the power to declare any law passed by a provincial legislature or the federal legislature as *ultra vires* or invalid on the ground that it is not in conformity with the Constitution.

Up to 1933, appeals were taken to the Judicial Committee of the Privy Council in criminal cases but those were stopped in that year. In 1949, civil appeals to the Judicial Committee of the Privy Council were also stopped. The result is that at present the Supreme Court of Canada is the highest court of appeal in all cases.

Every province has a superior court, district courts and country courts. The judges in all these courts are appointed by the Governor-General on the advice of the ministry. They hold their offices during good behaviour. Their salaries, allowances and pensions are determined by Parliament and cannot be changed to their disadvantage during their tenure of office.

### The Provinces

The government of a province in Canada is carried on by a Lieutenant-Governor who is appointed by the Governor-General for five years. As Lieutenant-Governors are appointed by the Federal Government, they look up to the same and consequently have a federal bias. On certain occasions, they have disregarded the advice of their governments and taken independent action. They have dismissed the cabinet and refused a dissolution. They have compelled their cabinet to appoint a Royal Commission of investigation and rejected recommendations by their cabinets. It is obvious that the Lieutenant-Governor of a province in Canada is more than a passive instrument in the hands of his cabinet. It is true that as a rule he acts upon the advice of his ministers, but on occasions he can act independently also.



In Canada, two provinces out of 9 have at present two Houses, viz., the Legislative Council and the Legislative Assembly. A provincial legislature has the exclusive power to alter the constitution of the province, although it cannot alter the tenure of office of the Lieutenant-Governor. It can, however, increase his powers and duties. Adult suffrage prevails in most of the provinces.

### Political Parties

The important political parties of Canada are the Conservative Party, the Liberal Party, the Labour Party, the Farmers Party and the Co-operative Commonwealth Federation Party.

**The Conservative Party.** It does not believe in the policy of laissez-faire, and stands for imposing high duties on foreign goods with a view to safeguard the interests of the people of Canada. It was responsible for the Ottawa Pact. It stands for the making of trade agreements on the basis of reciprocity. It stands for state interference in the economic life of the country and the methods suggested are unemployment and social insurance, abolition of child labour, fixing of minimum wages and maximum hours of work and the marketing of industrial products in order to avoid the profits of the middle man.

**The Liberal Party.** It stands for low tariffs and does not advocate the interference of the State in the economic life of the country. It also asserts the provincial rights and the sovereign status of Canada in the British Empire. It stands for making trade agreements not only with the members of the British Commonwealth but also with other foreign countries. Its strength is specially great in Quebec.

**The Labour Party.** It places human needs above property rights. It advocates nationalisation of natural resources, public ownership of public utilities and large-scale industries, nationalisation of banking system, establishment of a high standard of living with provision for social insurance, provision of work for the unemployed or the grant of maintenance to them, equal rights of citizenship for all irrespective of sex, class, origin or religion, restoration of civil liberties, repeal of the Immigration Act, the right of labour to organise itself, the removal of taxes from the necessities of life, taxation of land values, exemption of small income from taxation, abolition of the Senate, disarmament, professional representation, opposition to all forms of militarism, etc.

**The Farmers Party.** It stands for permanent peace in the world, opposition to imperial control, insistence of equal partnership in the Commonwealth, development of natural resources, reduction of tariffs on all sides, increase in national revenues by imposing a direct tax on unimproved land values, a graduated personal income tax, a graduated inheritance tax, the levy and collection of business profits tax, unemployment relief, growth of cultural cooperative societies, the discontinuance of titles and

honours, the reform of the Senate, the abolition of patronage, proportional representation, direct legislation, women suffrage, etc. Although many of the ideals of the Farmers Party have already been achieved, there is still a lot to be done.

**The Cooperative Commonwealth Federation Party (also called the C.C.F.).** It has made substantial progress since the Second World War. It has attained office in the province of Saskatchewan. It is the official opposition in several provinces. It is an active, aggressive group in the House of Commons. It is frankly socialist and tends to look to the British Labour Party for its inspiration. It aims at the nationalisation of many industries and a strict regulation of private enterprise. It proposes a comprehensive programme of social reforms. It has made a fairly successful appeal to labour all over Canada except Quebec and to farmers in a number of provinces.

### SUGGESTED READINGS

- |                           |   |
|---------------------------|---|
| <i>Borden, R. L.</i>      | : Canadian Constitution Studies, Oxford (1932).                                   |
| <i>Bourinot, Sir John</i> | : Parliamentary Government in Canada, 1916.                                       |
| <i>Brady</i>              | : Democracy in the Dominions, 1952.   |
| <i>Brown</i>              | : Canadian Democracy in Action (1953).  |
| <i>Bryce</i>              | : Modern Democracies, Vol. I.   |
| <i>Clement, W. H. P.</i>  | : The Law of the Canadian Constitution.   |
| <i>Clokie, E. M.</i>      | : Canadian Government and Politics, 1950.   |
| <i>Cole, Taylor</i>       | : The Canadian Bureaucracy, 1949.   |
| <i>Dawson, R. M.</i>      | : Constitutional Issues in Canada.  |
| <i>Dawson, R. M.</i>      | : Democratic Government in Canada, 1950.  |
| <i>Dawson, R. M.</i>      | : The Government of Canada, 1954.   |
| <i>Eratt, H. V.</i>       | : The King and His Dominion Governors, 1938.                                      |
| <i>Egerton, H. E.</i>     | : Federations and Unions in the British Empire, 1911.                             |
| <i>Forsey, E. A.</i>      | : The Royal Power of Dissolution of Parliament in the British Commonwealth, 1943. |
| <i>Gettys, C. L.</i>      | : The Administration of Canadian Conditional Grants, 1938.                        |
| <i>Kennedy, W. P. M.</i>  | : The Constitution of Canada.   |
| <i>Kennedy</i>            | : Essays in Constitutional Law, 1934.   |
| <i>Lefroy, A. H. F.</i>   | : Legislative Power in Canada.  |
| <i>Lefroy, A. H. F.</i>   | : Canada's Federal System.  |
| <i>Langstone, Rosa W.</i> | : Responsible Government in Canada.   |
| <i>Munro, W. B.</i>       | : American Influences on Canadian Government, 1929.                               |
| <i>Newton, A. P.</i>      | : Federal and Unified Constitutions, 1923.  |
| <i>Porritt, E.</i>        | : The Evolution of the Dominion of Canada.  |
| <i>Riddell, W. R.</i>     | : The Canadian Constitution in Form and in Fact.                                  |
| <i>Riddell, W. R.</i>     | : The Constitution of Canada in its Historical and Practical Working (1917).      |
| <i>Roberts, L.</i>        | : This is Ottawa, 1933.   |
| <i>Ross, Sir George</i>   | : The Senate of Canada, 1914.   |
| <i>Trotter, R. G.</i>     | : Canadian Federation.  |
| <i>Wrong, G. M.</i>       | : The Federation of Canada.   |



## CHAPTER 26

### THE CONSTITUTION OF RED CHINA

The importance of the study of the Constitution of Red China lies in the fact that China is the greatest rival and enemy of India and hence deserves our special attention. China is also the first among the nations of the world in population. Her population in 1953-54 was 58 crores and 30 lakhs. She is also among the largest political units in the world in area. She contains quantities of raw materials which may prove large enough to make her a major industrial and military power. Her strong and able leadership also demands careful study.

#### Historical

China which was once a great country of the world, declined during the nineteenth century. Taking advantage of her weakness, foreigners were able to establish their control and influence in the country. Great Britain fought the Opium Wars against China. Japan defeated her in 1895. The Boxer Rebellion of 1900 was crushed by the foreigners. Japan, Russia, France, Great Britain and Germany claimed and got concessions from the weak Chinese Government. It is true that in 1911, the Manchu dynasty was overthrown and a Republican Government was set up but that did not improve matters. Dr. Sun Yat Sen, in spite of his lofty idealism and patriotism, was not able to accomplish much. After his death in 1925, Chiang-Kai-Shek came to the front. He was able to establish his authority all over the country but he was not destined to have any rest. There were many factions in the country. There were revolts and civil wars. In 1931, Japan occupied Manchuria and was able to keep it in spite of opposition from various quarters. In July, 1937, Japan started war against China once again and that continued even after the beginning of World War II in 1939. Chiang-Kai-Shek had to shift his capital from one place to another on account of Japanese conquest of all the places near the coast-line of China.

During the Second World War, the United States helped China in every possible way. However, it was too much for the Chinese to hold the Japanese and check their advance. When Japan was defeated in the Second World War, China was restored all her territories which were formerly held by Japan. However, Chiang-Kai-Shek had still to fight the Communists of China. With the help of the American Government, Chiang-Kai-Shek started an all-out campaign against the Communists in China but he was defeated. His troops in Manchuria surrendered. Mukden fell in 1948. The Communists occupied Shantung. Nanking was captured in April, 1949 and Shanghai in May, 1949. On 21st September, 1949, the People's Republic of China was proclaimed at Peking. On 15th October, 1949, Canton fell. By



December, 1949, the remnants of the army of Chiang-Kai-Shek ran away to Formosa and Chiang-Kai-Shek was forced to establish the headquarters of his Government in Formosa. The Government of Red China was recognised by the Soviet Union and other countries including India, Pakistan, Great Britain, etc. However, the United States has refused to recognise the Communist regime in China. Red China has maintained very friendly relations with the Soviet Union and she has been helped a lot in various ways by Soviet Russia. The relations with India were cordial but India was attacked by Red China in October, 1962, and at present our relations are the most strained. Communist China considers the United States as her greatest enemy.

### **Making of the Constitution**

As regards the Constitution of Communist China which came into force in 1954, a Common Programme which was a sort of provisional Constitution, was adopted in 1949 by the Chinese People's Political Consultative Conference. However, the work of drafting the Constitution really started in January, 1953 when the Central People's Government Council appointed a committee for the drafting of the Constitution. That committee was headed by Mao Tse-tung. In March, 1954, the Drafting Committee accepted the first Draft submitted by the Central Committee of the Communist Party of China. The Second Draft was issued on 14th June, 1954. After a discussion of the Second Draft, a Third Draft was prepared. The Central People's Government Council examined the Third Draft and adopted it at its 34th meeting on 9th September, 1954. It was adopted by the National People's Congress of the People's Republic of China at its first session on September 20, 1954. It is this Constitution which is at present in force in Red China. However, this Constitution is not intended to be a final one. It is meant to serve the people of Red China during the four Five Year Plans. The people of Red China would frame another Constitution in or about 1972.

*Preamble.* It is stated in the Preamble of the Constitution that after more than a century of struggle, the Chinese people, led by the Communist Party of China, finally achieved in 1949 victory against imperialism, feudalism and capitalism and founded a people's democratic dictatorship. The system of people's democracy of China guarantees that China can in a peaceful way banish exploitation and poverty and build a prosperous and happy socialist society. From the founding of the People's Republic of China to the attainment of a socialist society is a period of transition. During the transition, the fundamental task of the state is, step by step, to bring about the socialist industrialisation of the country and to accomplish the socialist transformation of agriculture, handicrafts and capitalist industry and commerce.

The Constitution of China consolidates the gains of the Chinese people's revolution and the victories won in the political and economic fields since the founding of the People's Republic of China. It also reflects the basic needs of the State in the period of transition



as well as the general desire of the people as a whole to build a socialist society.

It is also stated in the Preamble that all nationalities of China are united in one great family of free and equal nations. This unity of China's nationalities will continue to gain in strength as it is based on ever-growing friendship and mutual aid among themselves and the struggle against imperialism, public enemies of the people and local nationalism. It is also stated in the Preamble that the object of the foreign policy of China is to work for world peace and the progress of humanity. However, the people of India and Tibet are now too familiar with the actual working of these professions.

*General Principles.* There are certain general principles of the Constitution of Red China. (1) It is stated in the Constitution that Red China is a people's democratic state led by the working class and based on the alliance of workers and peasants (Article 1). All power in the People's Republic of China belongs to the people. The organs through which the people exercise power are the National People's Congress, the local people's congresses. The National People's Congress, the local people's congresses and other organs of State without exception practise democratic centralism (Art. 2).

(2) The People's Republic of China is a unified and multinational State. All the nationalities are equal. Discrimination against or oppression of any nationality and acts which undermine the unity of the nationalities are prohibited. All the nationalities have the freedom to use and foster the growth of their spoken and written languages and to preserve or reform their own customs or ways. Regional autonomy applies in areas entirely or largely inhabited by national minorities. National autonomous areas are inalienable parts of the Republic of China (Art. 3).

(3) The Republic of China, by relying on the organs of state and the social forces, and by means of socialist industrialisation and socialist transformation, ensures the gradual abolition of systems of exploitation and the building of a socialist society (Art. 4). At present, the ownership of the means of production mainly takes the form of state-ownership, co-operative ownership, ownership by individual working people and capitalist ownership (Art. 5). State-owned economy is a socialist economy owned by the whole people. It is the leading force in the national economy and the material basis on which the State carries out socialist transformation. The state ensures priority for the development of State-owned economy. All mineral resources and water, as well as forests, undeveloped land and other resources which the State owns by law, are the property of the whole people (Art. 6). Co-operative economy is either socialist economy collectively owned by the working masses or semi-socialist economy in part collectively owned by the working masses. Such partial collective ownership by the working masses is a transitional form by means of which individual peasants, individual handicraftsmen and other individual



working people organize themselves in their advance towards collective ownership by the working masses. The State protects the property of the co-operatives and encourages, guides and helps the development of co-operative economy. It regards the promotion of producers' co-operatives as the chief means for the transformation of individual farming and individual handicrafts (Art. 7). The State protects peasant ownership of land and other means of production according to law. The state guides and helps individual peasants to increase production and encourages them to organise producers', supply and marketing and credit co-operatives voluntarily. The policy of the State towards rich-peasant economy is to restrict and gradually eliminate it (Art. 8). The State protects the ownership of the means of production by handicraftsmen and other non-agricultural individual working people according to law. The State guides and helps individual handicraftsmen and other non-agricultural individual working people to improve the management of their affairs and encourages them to organise producers' and supply and marketing economic plan of the State (Art. 9). The State protects the ownership by capitalists of the means of production and other capital according to law. The policy of the State towards capitalist industry and commerce is to use, restrict and transform them. The State makes use of the positive qualities of capitalist industry and commerce which are beneficial to national welfare and the people's livelihood, restricts their negative qualities which are not beneficial to national welfare and the people's livelihood, encourages and guides their transformation into various forms of State-capitalist economy, gradually replacing capitalist ownership with ownership by the whole people. This it does by means of control exercised by the administrative organs of the State, the leadership given by State-owned economy and supervision by the workers. The State forbids any kind of illegal activity by capitalists which endangers the public interest, disturbs the social-economic order or undermines the co-operatives voluntarily (Art. 10).

(4) The State protects the rights of citizens to ownership of lawful income, of savings, houses and the means of life. The State protects the right of citizens to inherit private property according to law. The State may, in the public interest, buy, requisition or nationalise land and other means of production both in cities and countryside according to provisions of law. The State forbids any person to use his private property to the detriment of the public interest (Articles 11 to 14).

(5) By economic planning, the State directs the growth and transformation of the national economy to bring about the constant increase of productive forces, in this way enriching the material and cultural life of the people and consolidating the independence and security of the country (Art. 15).

(6) Work is a matter of honour for every citizen of Communist China who is able to work. The State encourages initiative and creative activity of citizens in their work (Art. 16).





(7) All organs of State must rely on the masses of the people, constantly maintain close contact with them, heed their opinions and accept their supervision (Art. 17).

(8) All persons working in organs of state must be loyal to the people's democratic system, observe the Constitution and the law and strive to serve the people (Art. 18).

(9) The Republic of China safeguards the people's democratic system, suppresses all treasonable and counter-revolutionary activities and punishes all traitors and counter-revolutionaries. The State deprives feudal landlords and capitalists of political rights for a specific period of time according to law. At the same time, it provides them with a way to live, in order to enable them to reform through work and become citizens who earn their livelihood by their own labour (Art. 19).

(10) The armed forces of Communist China belong to the people. Their duty is to safeguard the gains of the people's revolution and of national construction, and to defend the sovereignty, territorial integrity and security of the country (Art. 20).

*The State Structure: The National People's Congress.* The National People's Congress of Communist China is the highest organ of state power. It is the only organ exercising the legislative power of the State. It is composed of deputies elected by provinces, autonomous regions, municipalities directly under the central authority, the armed forces and the Chinese resident abroad. The number of deputies to the National People's Congress, including those representing national minorities, and the manner of their election, are prescribed by the electoral law. The members of the Congress are elected for four years. Two months before the term of office of the Congress expires, its Standing Committee must carry to completion the election of deputies to the next National People's Congress. If exceptional circumstances arise preventing such an election, the term of office of the sitting members can be prolonged until the first session of the next National People's Congress. When the Congress meets, it elects a Presidium to conduct its session (Arts. 21-24, 26).

The functions and powers of the National People's Congress are to amend the Constitution, to enact laws, to supervise the enforcement of the Constitution, to elect the Chairman and the Vice-Chairman of the People's Republic of China, to decide on the choice of the Premier of the State Council upon recommendation by the Chairman of the People's Republic of China and of the component members of the State Council upon recommendation by the Premier, to decide on the choice of the Vice-Chairmen and members of the Council of National Defence upon recommendation by the Chairman of the People's Republic of China, to elect the President of the Supreme People's Court, to elect the Chief Procurator of the Supreme People's Procuratorate, to decide on the national economic plan, to examine and approve the state budget and the financial report, to ratify the status and boundaries of provinces, autonomous regions,



and municipalities directly under the central authority, to decide on general amnesties, to decide on questions of war and peace and to exercise such other functions and powers as the National People's Congress considers necessary (Art. 27).

The National People's Congress has power to remove from office the Chairman and the Vice-Chairman of the People's Republic of China, the Premier and Vice-Premiers, Ministers, Heads of Commissions and the Secretary-General of the State Council, the Vice-Chairmen and members of the Council of National Defence, the President of the Supreme People's Court and the Chief Procurator of the Supreme People's Procuratorate (Art. 28).

Amendments to the Constitution of Red China require a two-thirds majority vote of all the deputies to the National People's Congress. Laws and other bills require a majority vote of all the deputies to the Congress (Art. 29).

The National People's Congress establishes a Nationalities Committee, a Bills Committee, a Budget Committee, a Credentials Committee and other necessary committees. The Nationalities Committee and the Bills Committee are under the direction of the Standing Committee of the National People's Congress when the National People's Congress is not in session (Art. 34).

Investigation committees may be constituted to enquire into specific questions when the National People's Congress, or its Standing Committee if the National People's Congress is not in session, deems it necessary. All organs of state, people's organisations and citizens concerned are obliged to supply necessary information to these committees when they conduct investigations. Deputies to the National People's Congress have the right to address questions to the State Council, or to the Ministries and Commissions of the State Council, which are under obligation to answer. No deputy to the National People's Congress can be arrested or placed on trial without permission of the National People's Congress or, when the National People's Congress is not in session, of its Standing Committee. Deputies to the National People's Congress are subject to the supervision of the units which elect them. These electoral units have power to replace at any time the deputies they elect, according to the procedure prescribed by law (Arts. 35 to 38).

The National People's Congress meets once a year and is convened by its Standing Committee. It can also be convened whenever, the Standing Committee deems it necessary or one-fifth of the deputies so propose (Art. 25).

It is pointed out that there are certain advantages of this system. The Deputies are engaged in different types of productive work in their everyday life and that is not disturbed because of their status as deputies. They are in daily, close and constant touch with the rank and file because they do their work in their midst and a class of professional politicians does not, therefore, emerge. They are able to bring to every session a freshness of mind and a seriousness of view rare among professional politicians.

They are not inclined to waste time on minor matters like engaging in complicated political manoeuvres. The people can also bring to the notice of the State Council or ministries through their deputies anything they consider important or noteworthy.

Chien Tuan-Sheng, President of the College of Political and Juridical Sciences, Peking, has made the following observations with regard to the position of deputies in China: "Our deputies are all actively engaged in various types of work, and do not give up their jobs on being elected. It is through their work that they keep in contact with the people, their needs and opinions. Deputies who are workers or engineers do so by remaining in the factory, where they gain daily first-hand knowledge of the requirements of industry. The same is true of those engaged in agriculture, education, the arts and all other fields. It is held that if the deputies gave up their own work, even for their period of office (four years), they could quickly lose their representative character and become professional politicians. Deputies who are in daily contact with the rank and file, on the other hand, bring to every session a freshness of mind and a seriousness of view rare among professional politicians. Nor are they inclined to waste time on such minor matters as private bills, or engage in complicated manoeuvres such as filibustering, which can do so much to delay public business. The short sessions do not limit the right of constituents to bring matters to the attention of the Congress through their deputies at any time. If constituents wish to make complaints or suggestions to the Government between sessions, their deputies have the duty, to address questions, through the Standing Committee, to the State Council or any of its Ministries and Commissions, which they are obliged to answer. Deputies to the National People's Congress also attend sessions of the provincial or other local people's congress which elected them, and are subject to recall by their electors."

*Standing Committee.* The Standing Committee of the National People's Congress is the permanent body of the National People's Congress. It is composed of a Chairman, Vice-Chairmen, Secretary-General and the members and they are elected by the National People's Congress (Art. 30).

The Standing Committee exercises the following functions and powers:—

- (1) To conduct the election of deputies to the National People's Congress;
- (2) To convene the National People's Congress;
- (3) To interpret the laws;
- (4) To adopt decrees;
- (5) To supervise the work of the State Council, the Supreme People's Court and the Supreme People's Procuratorate;
- (6) To annul decisions and orders of the State Council where these contravene the Constitution, laws or decrees;



- (7) To revise or annul inappropriate decisions of organs of state power of provinces, autonomous regions, and municipalities directly under the central authority;
- (8) To decide on the appointment or removal of any Vice-Premier, Minister, Head of Commission or Secretary-General of the State Council when the National People's Congress is not in session;
- (9) To appoint or remove the Vice-Presidents, judges, and members of the Judicial Committee of the Supreme People's Court;
- (10) To appoint or remove the Deputy Chief Procurators, Procurators, and members of the Procuratorial Committee of the Supreme People's Procuratorate;
- (11) To decide on the appointment or recall of plenipotentiary envoys to foreign states;
- (12) To decide on the ratification or abrogation of treaties concluded with foreign states;
- (13) To institute military, diplomatic and other special titles and ranks;
- (14) To institute and decide on the award of state orders, medals and titles of honour;
- (15) To decide on the granting of pardons;
- (16) To decide, when the National People's Congress is not in session, on the proclamation of a state of war in the event of armed attack against the state or in fulfilment of international treaty obligations concerning common defence against aggression;
- (17) To decide on general or partial mobilization;
- (18) To decide on the enforcement of martial law throughout the country or in certain areas; and
- (19) To exercise such other functions and powers as are vested in it by the National People's Congress (Art. 31).

The Standing Committee of the National People's Congress exercises its functions and powers until the next People's Congress elects a new Standing Committee. The Standing Committee is responsible to the National People's Congress and reports to it. The National People's Congress has power to recall members of its Standing Committee (Art. 32-33).

### **Chairman of People's Republic of China**

The Chairman of People's Republic of China is elected by the National People's Congress. Any citizen of China who has a right to vote and stand for election and has reached the age of 35 is eligible for election as Chairman. His term of office is 4 years (Art. 39).

In accordance with the decisions of the National People's Congress or its Standing Committee, the Chairman promulgates laws and decrees and appoints or removes the Premier, Vice-Premiers, Ministers, Heads of Commissions and the Secretary-General of the State Council. He appoints or removes the Vice-Chairman and members of the Council of National Defence. He confers state orders, medals and titles of honour, proclaims general amnesties and grants pardons. He proclaims martial law. He proclaims a state of war and orders mobilization (Art. 40).

The Chairman represents the People's Republic of China in its relations with foreign states, receives foreign envoys and, in accordance with decisions of the Standing Committee of the National People's Congress, appoints or recalls plenipotentiary envoys to foreign states and ratifies treaties concluded with foreign states (Art. 41).

The Chairman of the People's Republic of China commands the armed forces of the country, and is Chairman of the Council of National Defence (Art. 42).

The Chairman convenes a Supreme State Conference whenever necessary and acts as its Chairman. The Vice-Chairman of the People's Republic of China, the Chairman of the Standing Committee of the National People's Congress, the Premier of the State Council and other persons concerned take part in the Supreme State Conference. The Chairman submits the views of the Supreme State Conference on important affairs of state to the National People's Congress, its Standing Committee, the State Council, or other bodies concerned for their consideration and decision (Art. 43).

The Vice-Chairman of the People's Republic of China assists the Chairman in his work. The Vice-Chairman may exercise such part of the functions and powers of the Chairman as the Chairman may entrust to him. The provisions of Art. 39 of the Constitution governing the election and term of office of the Chairman of the People's Republic of China apply to the election and term of office of the Vice-Chairman (Art. 44).

The Chairman and the Vice-Chairman of the People's Republic of China exercise their functions and powers until the new Chairman and Vice-Chairman elected by the next National People's Congress take office. If the Chairman of the People's Republic of China is not able to perform his duties for a long period on account of health, the Vice-Chairman exercises the functions and powers of the Chairman on his behalf. If the office of the Chairman falls vacant, the Vice-Chairman succeeds to the office of the Chairman (Art. 46).

It is to be observed that the Chairman occupies a unique position in the Constitution. He has no exact counterpart in any other country. He cannot be compared with the President of the United States or that of France. In one way, he resembles the Chairman of the Presidium of the Supreme Soviet of the U.S.S.R. The Chairman is the symbol of the unity of the State.



*The State Council.* The State Council of Communist China is the executive of the highest organ of State power. It is the highest administrative organ of State (Art. 47). It consists of the Premier, Vice-Premiers, Ministers, Heads of Commissions and the Secretary-General. The organisation of the State Council is determined by law. (Art. 48).

The State Council exercises the following functions and powers:—

- (1) To formulate administrative measures, issue decisions and verify their execution, in accordance with the Constitution, laws and decrees.
- (2) To submit bills to the National People's Congress or its Standing Committee.
- (3) To co-ordinate and lead the work of Ministries and Commissions.
- (4) To co-ordinate and lead the work of local administrative organs of state throughout the country.
- (5) To revise or annul inappropriate orders and directives of Ministers or of Heads of Commissions.
- (6) To revise or annul inappropriate decisions and orders of local administrative organs of state.
- (7) To put into effect the national economic plan and provisions of the state budget.
- (8) To control foreign and domestic trade.
- (9) To direct cultural, educational and public health work.
- (10) To administer affairs concerning the nationalities.
- (11) To administer affairs concerning Chinese resident abroad.
- (12) To protect the interests of the state, to maintain public order and to safeguard the rights of citizens
- (13) To direct the conduct of external affairs.
- (14) To guide the building up of the defence forces.
- (15) To ratify the status and boundaries of autonomous *chou*, counties, autonomous counties, and municipalities.
- (16) To appoint or remove administrative personnel according to provisions of law; and
- (17) To exercise such other functions and powers as are vested in it by the National People's Congress or its Standing Committee (Art. 49).

The Premier directs the work of the State Council and presides over its meetings. The Vice-Premiers assist the Premier in his work. (Art. 50).

The Ministers and Heads of Commissions direct the work of their respective departments. Ministers and Heads of Commissions



may issue orders and directives within the jurisdiction of their respective Departments and in accordance with laws and decrees and decisions and orders of the State Council (Art. 51).

The State Council is responsible to the National People's Congress and reports to it, or, when the National People's Congress is not in session, to its Standing Committee (Art. 52).

*Administrative Divisions of China.* The Administrative divisions of Communist China are in this way. The country is divided into provinces, autonomous regions, and municipalities directly under the central authority. Provinces and autonomous regions are divided into autonomous *chou*, counties, autonomous counties and municipalities. Counties and autonomous counties are divided into *Hsiang*, nationality *Hsiang* and towns. Municipalities directly under the central authority and other large municipalities are divided into districts. Autonomous *chou* are divided into counties, autonomous counties and municipalities. Autonomous regions, autonomous *chou* and autonomous counties are all national autonomous areas. (Art. 53).

The People's Congresses and People's Councils are established in provinces, municipalities directly under the central authority, counties, municipalities, municipal districts, *Hsiang*, National *Hsiang* and towns. Organs of self-government are established in autonomous regions, autonomous *chou* and autonomous counties (Art. 54).

Local People's Congresses, at all levels, are the local organs of state power (Art. 55).

Deputies to the People's Congresses of provinces, municipalities directly under the central authority, counties and municipalities divided into districts are elected by the People's Congresses of the next lower level. Deputies to the People's Congresses of municipalities not divided into districts, municipal districts, *Hsiang*, Nationality *Hsiang* and towns are directly elected by the voters. The number of deputies to the Local People's Congresses and the manner of their election are prescribed by electoral law (Art. 56).

The term of office of the Provincial People's Congresses is 4 years. The term of office of the People's Congresses of municipalities under the central authority, counties, municipalities, municipal districts, *hsiang*, nationality *hsiang* and towns is two years (Art. 57).

The Local People's Congresses at every level ensure the observance and execution of laws and decrees in their respective administrative areas. They draw up plans for local economic and cultural development and for public works. They examine and approve the local budgets and financial reports. They protect public property. They maintain public order. They safeguard the rights of citizens and the equal rights of national minorities (Art. 58).

The Local People's Congress elect and have power to recall members of the People's Council at corresponding levels. The People's congresses at county level and above elect and have power



to recall, the Presidents of People's courts at corresponding levels (Art. 59).

The local People's congresses adopt and issue decisions within the limits of the authority prescribed by law. The people's congresses of nationality *hsiang* may, within the limits of authority prescribed by law, take specific measures appropriate to the characteristics of the nationalities concerned. The local people's congresses have power to revise or annul inappropriate decisions and orders of people's councils at corresponding levels. The People's congresses at county level and above have power to revise or annul inappropriate decisions of people's congresses at the next lower level as well as inappropriate decisions and orders of people's councils at the next lower level (Art. 60).

Deputies to the people's congresses of provinces, municipalities directly under the central authority, counties, and municipalities divided into districts are subject to supervision by their electorates. The electoral units and electorates, which elect the deputies to the local people's congresses have power at any time to recall their deputies according to the procedure prescribed by law (Art. 61).

Local people's councils are the executive organs of the local people's congresses at corresponding levels and are the local administrative organs of State (Art. 62).

A local people's council is composed, according to its level, of the provincial governor and deputy provincial governors; or the mayor and deputy mayors; or the county head and deputy county heads; or the district head and deputy district heads; or the *hsiang* head and the deputy *hsiang* heads, of the town head and deputy town heads, as the case may be, together with council members. The term of office of a local people's council is the same as that of the people's congress at corresponding level. The organisation of local people's councils is determined by law (Art. 63).

The local people's councils administer their respective areas within the limits of the authority prescribed by law. They carry out the decisions of people's congresses at corresponding levels and decisions and orders of administrative organs of state at higher levels. They issue decisions and orders within the limits of the authority prescribed by law (Art. 64).

The people's councils at county level and above direct the work of all their subordinate departments and of people's councils at lower levels, as well as appoint or remove personnel of organs of state according to provisions of law. The people's councils at county level and above have power to suspend the execution of inappropriate decisions by people's congresses at the next lower level and to revise or annul inappropriate orders and directives issued by their subordinate departments, and inappropriate decisions and orders issued by people's councils at lower levels (Art. 65).

The local people's councils are responsible to the people's



congresses at corresponding levels and to the administrative organs of state at the next higher level, and report to them. The local people's councils throughout the country are administrative organs of state which are under the united leadership of, and subordinate to, the State Council (Art. 66).

The organs of self-government of all autonomous regions, autonomous *chou* and autonomous counties are formed in accordance with the basic principles governing the organization of local organs of state as specified in the Constitution. The form of each organ of self-government is to be determined in accordance with the wishes of the majority of the people of the nationality or nationalities enjoying regional autonomy in a given area. Each nationality is entitled to appropriate representation on the organs of self-government. The organs of self-government exercise autonomy within the limits of the authority prescribed by the Constitution and the law. They administer their own local finances within the limits of the authority prescribed by law. They organise their local public security forces in accordance with the military system of the state. They draw up regulations governing the exercise of autonomy and other special regulations suited to the political, economic, cultural characteristics of the nationality or nationalities in a given area and submit any such regulations to the Standing Committee of the National People's Congress for approval. In performing their duties, organs of self-government employ the spoken or written language or languages used by the nationality or nationalities in a given area. The higher organs of State should fully safeguard the right of organs of self-government of all autonomous regions, autonomous *chou* and autonomous counties to exercise autonomy and should assist the various national minorities in their political, economic and cultural development. (Arts. 67 to 72.)

It is pointed out that regional governments in Communist China have ceased to exercise whatever constitutional power they had earlier. It is true that China is divided into six regions but actually she is being directly ruled by the six regional Bureaux of the Central Committee of the Communist Party. Even at the lowest level, day-to-day administration is run by respective parties' committees. Matters like an ambulance for an old woman's sick son cannot be arranged without the intervention of the party. Mao Tse-Tung who handed over in 1959 the chairmanship of the Chinese People's Republic to Liu-Shao-Chi and took over control and guidance of the Communist Party is thus the *de facto* ruler of China, though constitutionally he has no such authority. The result is that the administrative set up and personnel remain but duplication by the Communist Party from the lowest to the highest level has rendered it not only powerless but virtually redundant. The Communist Party has millions of men and women to keep the wheels of the Government going but millions of men and women in the administration are actually being wasted. (*The Hindustan Times*, dated 28th April, 1963, p. 12.)



## The Judiciary in China

During the regime of Chiang-Kai-Shek, there was no judicial system in China which could be compared with that prevailing in India, Great Britain and the United States. There was no rule of law in the country. Law was administered in the interests of a small number of people and there was no regard for justice as such. No wonder, the people suffered.

When the Communists came to power in China in 1949, all laws, decrees and judicial systems of Kuomintang China were abrogated. The six legal codes as well as the case law were abrogated. All the Judges and advocates were also disqualified. A Commission for the codification of the laws of the country was set up. The new codes were to accord with the needs of the new social and political order desired by the Communists. Pending the codification of laws, cases were tried and decided according to the commonsense of the Judges and the fundamental policy of the Government.

From September 1949, to September 1954, China was governed by a provisional Constitution known as the Common Programme. Since September, 1954, justice is administered according to the Constitution of 1954. Art. 3 of the Organic Law of the People's Courts of China provides that "the task of the People's Courts is to try criminal and civil cases, and, by judicial process to punish criminals and settle civil disputes in order to safeguard the people's democratic system, maintain public order, protect public property, safeguard the rights and lawful interests of the citizens and assure the successful carrying out of the socialist construction and socialist transformation in the country. The People's Courts, in all their activities, educate citizens in loyalty to their country and voluntary observance of law." The Courts in China are accountable to the elective bodies of the corresponding administrative level.

The Constitution provides for three classes of Courts in China. The Supreme People's Court is the highest judicial organ of the country. The Local People's Courts administer justice locally. The Special People's Courts deal with such subjects as railways, waterways, etc. Another class of Courts is known as the Comrade Workers' Courts.

The *Supreme Court* is the highest judicial organ in China. It possesses supervisory jurisdiction over all the courts in the country. There are two Divisions of the Court: civil and criminal. The Court consists of a President (Chief Justice), a number of Vice-Presidents, chief judges of Divisions, associate chief judges of Divisions, Judges and Assistant Judges. The President is elected by the National People's Congress and is removable only by that body. A simple majority vote of all the members of the Congress is sufficient. All the other Judges as well as the members of the judicial committee of the Court, are appointed by Standing Committee and also removable by that body. The assistant judges are appointed by the Ministry of Justice.

The Supreme Court has both original and appellate jurisdiction. It takes cognizance of "protests lodged by the Supreme People's Procuratorate in accordance with the procedure of judicial supervision."

There are three grades of *Local People's Courts*. The Higher People's Courts are equivalent to the High Courts in India and they are 28 in number. Intermediate People's Courts are equivalent to the District Courts in India and their number is about 200. The Basic People's Courts number about 3,000. The establishment of the higher Courts is decided upon by the Central Government and that of the other two types of Courts by the Provincial Governments concerned. The President of Local People's Court is elected, by the Local People's congress of the corresponding administrative level. The Vice-President and other Judges are appointed and removed by the corresponding local government. The Basic People's Courts are sub-divided into county and municipal courts, courts of autonomous counties and courts of municipal districts. In special circumstances, basic courts may constitute "People's Tribunals" to try special cases. The tribunals are considered as component parts of Basic People's Courts. These courts try both civil and criminal cases of a minor nature. They settle their disputes and minor criminal cases requiring a formal trial. They direct the work of people's conciliation committees and execute the directions of the higher courts.

*Special People's Courts* exist in the form of military courts, railways and transport courts and water transport courts. The organisational form of the special courts is determined by the National People's Congress at the time the establishment of such Courts is decided upon.

*The Comrade Workers' Courts* were set up in 1953. "The Workers' Court is different from the People's Court in that the latter is an organ to carry out the duty and the right of judgment on behalf of the State, while the former is one organised by the workers and staff members themselves. But the workers' court also differs from the practice of criticism and self-criticism as generally conducted, because the disciplinary education and action taken by the workers' courts are of a forcible nature and those who are brought under its sanction are obliged to comply."

Article 78 of the Constitution provides that in administering justice, the People's courts are independent, subject only to the law. Every citizen, irrespective of race, nationality, sex and occupation, is equal before the law. The courts base their judgments on facts and law. According to Saila Kumar Mukerji, "While in India the judiciary is absolutely independent of the legislature so much so that it has power to set aside a law framed by the legislature as *ultra vires* of the Constitution, in China, the judiciary is an adjunct of the executive and has no power to interpret laws." The judges of China are subordinate to the policy of the Government which finds expression in law. The judges



in China cannot be said to be independent as such. While giving their judgments, they have to take into consideration the policy of the State and the Communist Party of China.

In China, the Presidents of courts are elected by the People's congresses of the respective levels. The other judges are appointed by the Government of the corresponding level. However, the judges of the Supreme Court are appointed not by the Central Government but by the Standing Committee. Judges are recruited in two ways. Some of them are taken from the revolutionary leaders and the others from the law graduates. Shri Tung Pi-wu, the President of the Supreme Court, was a great Communist leader. New judges are required to undergo training for some period. Judges in China are paid very small salaries. A judge of a County's People's court is paid about Rs. 200 p.m. The highest pay of a provincial court judge is about Rs. 350 p.m. In no case the salary of a judge exceeds Rs. 450 a month. No judge of a provincial court can afford a motor car and he must travel in a public conveyance like an ordinary citizen. The Chief Judge of the provincial court is provided with a car by the Government.

A very significant feature of the courts in China is the association of *assessors* with the courts of the country. Their object is "to attract the people to the administration of the State, into the fulfilment of the most important state function through their participation in the decision of court matters and to introduce into the functioning of justice a genuine popular principle, the socialist legal consciousness, convictions and conscience". It is pointed out that the association of assessors with judicial work gives the people "a feeling of being masters of the State and stimulates their production—construction activity", ensuring at the same time popular supervision of the judges. The assessors are drawn from the local community and have, in most cases, direct personal knowledge of production work. They prove themselves of great help to the judges in determining the merits of a case. All assessors are elected and practically half of them are women. An assessor is elected for a term of two years and he serves for about 10 days in a year. Judgment is made in chambers by a majority vote of the judges and the assessors combined.

Article 76 of the Constitution provides that the accused has the *right to defence*. The accused may defend himself or appoint an Advocate or have his case defended by a citizen recommended by a people's organisation, by a citizen approved by the court or by a near relative or guardian. Citizens are allowed to use their own spoken and written language. A person detained under trial may challenge the investigation and ask for a more thorough investigation. In the Court also, he can challenge the prosecution and ask the trying judge to summon new witnesses to testify before the court. He may also demand that the trying judge be changed.

When the Communists came to power, they removed all the previous lawyers. The result is that there are no private lawyers in China today. The Government forms a panel of lawyers from whom the accused can choose his own counsel. A lawyer in China defends the interests of the State and he upholds the position of the State and the people. Even when he takes up the case of the accused, he has to follow an independent approach. While he has to help the accused in his defence, he has also to help the court in the exercise of correct judgment. The result is that what he defends are his client's legitimate interests which are in line with the interests of the State.

Article 76 provides that cases in People's courts in China be heard in public until otherwise provided for in law. Cases involving security of the State are heard in camera. In open trials, the members of the public have a right to address the court. "Any person can supply to the judges any information he or she may possess in connection with a particular case. When a case is going on, any person from the public may stand up, with the permission of the Court, put any question or express his or her opinion with regard to any matter connected with the case. The courts as a rule give full opportunity to the people in such cases and if the court's point of view differs from that of the people, the court takes pains to explain its point of view and convince the people of its correctness."

Courts in China are educative and reformist institutions. In civil cases, a lot of emphasis is put on conciliation and mediation between the parties. "When litigants appear before the Court, they are told to thrash out their differences through mediation facilities."

The procedure in China is simple. That helps the disposal of cases quickly. A court in China is "Open to anyone, free to anyone and your dispute might take time and prolonged discussion but it would not matter whether you enter the court well dressed or in rags, with a pound or a penny in your pocket. You cannot always pin down the law, saying 'the law will do this and thus in such and such a case, but there was justice.'"

*Criminal cases* in China are divided into two categories, political and non-political. The handling of political cases in China has been condemned on the ground that the whole thing is arbitrary and capricious. According to Chou-en-lai, "The policy of our State towards counter-revolutionary elements is one of suppression coupled with leniency. That is to say, we rigidly suppress all those whose crimes are iniquitous and who are stubbornly hostile to the people or are die-hards who refuse to repent. Towards ordinary counter-revolutionary criminals, we adopt a policy of combining punishment with reform, to give them a chance of making a fresh start through the process or reform of work."

Sentences are light in most cases. When a person is sentenced to death, that sentence must be confirmed by a High



Court. To begin with, counter-revolutionaries were tried with leniency but that is not the case now. It is pointed out that criminal cases in China are on the decline but the number of civil cases is increasing. About two-thirds of the civil cases relate to matrimonial differences.

The courts in China are responsible to the elected people's congress of the respective levels as well as to the higher courts up to the Supreme Court. The Supreme Court is also responsible to the National People's Congress or the Standing Committee. The result is that the whole judicial set-up of China is an ancillary organ of the legislature. The President of the Supreme Court sits in the National People's Congress and participates in its discussions. Unlike the Soviet Union, where all judges are elected, in China only the Presidents of the courts are elected for four years. Presidents of the courts could be removed in China by a simple majority vote of the members of the People's Congresses of the respective levels.

It is true that the Constitution of China guarantees a number of fundamental rights to the people but those rights have not always been observed and there has been a lot of criticism of their infringement. Persons suspected of counter-revolutionary activities can be disfranchised and subjected to surveillance by the public security authorities, without any reference to the courts.

According to Chief Justice Tung Pi-wu, "I must point out here that in some places attention was paid only to the facts of crimes and the proper legal procedures were not fully observed when criminals were arrested." There have also been cases of maltreatment of criminals by those in charge of persons and labour reform units and cases of unjust arrests and illegal extortion of confessions through physical torture. It is undesirable that the directives of the Communist Party of China should be followed by the Judges while deciding cases.

*The People's Procuratorate.* The Supreme People's Procuratorate of the People's Republic of China exercises procuratorial authority over all departments of the State Council, all local organs of state, persons working in organs of state and citizens, to ensure observance of the law. Local organs of the People's Procuratorates and special people's procuratorates exercise procuratorial authority within the limits prescribed by law. Local organs of the people's procuratorate and the Special People's Procuratorates work under the leadership of the people's procuratorates at higher level and all work under the unified leadership of the Supreme People's Procuratorate. The term of office of the Chief Procurator of the Supreme People's Procuratorate is 4 years. The organisation of People's Procuratorate is determined by law. In the exercise of their authority, local organs of the people's procuratorate are independent and are not subject to interference by local organs of the state. The Supreme People's Procuratorate is responsible to the National People's Congress and reports to it. When the National People's Congress is not in session, it reports to its Standing Committee.

*Fundamental Rights and Duties of Citizens.* Articles 85 to 103 of the Constitution of Communist China deal with the fundamental rights and duties of citizens of China. It is laid down in the Constitution that the citizens of China are equal before the law. Those citizens who have reached the age of 18 have the right to vote and stand for election, whatever their nationality, race, sex, occupation, social origin, religious belief, education, property status, or length of residence, except insane persons and persons deprived by law of the right to vote and stand for election. Women have equal rights with men to stand for election.

Citizens have freedom of speech, freedom of the press, freedom of assembly, freedom of association, freedom of procession and freedom of demonstration. By providing the necessary material facilities, the state guarantees to citizens enjoyment of these freedoms. Citizens have freedom of religious belief. Freedom of person of citizens of China is inviolable. No person can be arrested except by decision of a people's court or with the sanction of a people's procuratorate. The homes of citizens of China are inviolable, and privacy of correspondence is protected by law. Citizens of China have freedom of residence and freedom to change their residence.

Citizens of China have the right to work. To guarantee enjoyment of this right, the State, by planned development of the national economy, gradually creates more employment and better working conditions and wages.

Working people in China have the right to rest and leisure. To guarantee enjoyment of this right, the State prescribes working hours and holidays for workers and office employees. At the same time, it gradually expands material facilities to enable working people to rest and build up their health.

Working people in China have the right to material assistance in old age, illness or disability. To guarantee enjoyment of this right, the state provides social insurance, social assistance and public health services and gradually expands these facilities.

Citizens of China have the right to education. To guarantee enjoyment of this right, the state establishes and gradually extends the various types of schools and other cultural and educational institutions. The State pays special attention to the physical and mental development of young people.

The Republic of China safeguards the freedom of citizens to engage in scientific research, literary and artistic creation and other cultural activity. The state encourages and assists citizens engaged in science, education, literature, art and other fields of culture to pursue their creative work.

In China, women enjoy equal rights with men in all spheres—political, economic, cultural, social and domestic. The State protects marriage, the family and the mother and child.

Citizens of China have the right to bring complaints against any person working in organs of a state for transgression of law



or neglect of duty by making a written or verbal statement to any organ of state at any level. People suffering loss of their rights as citizens by reason of infringement by persons working in organs of state have the right to compensation.

The Republic of China protects the proper rights and interests of Chinese resident abroad.

The Republic of China grants the right of asylum to any foreign national persecuted for supporting a just cause, taking part in the peace movement or engaging in scientific activity.

Citizens of China must abide by the Constitution and the law, uphold discipline at work, keep public order and respect social ethics. The public property of the People's Republic of China is sacred and inviolable. It is the duty of every citizen to respect and protect public property. It is the duty of every citizen to pay taxes according to law. It is the sacred duty of every citizen to defend the homeland. It is the honourable duty of every citizen to perform military service according to law.

### **The Chinese Communes**

The establishment of the Chinese Communes is a very distinctive feature of the Chinese set-up. Their origin can be traced to a movement which was started in 1958. By September 1958, the movement for setting up Communes assumed national importance, following the decision of the Communist Party to accelerate the movement. The result was that by the end of September 1958, nearly 90% of the peasant households in China had formed themselves into 23,348 people's communes. Each of those Communes had 4,797 households on an average.

A Commune may comprise anything between 2,000 and 20,000 rural families depending upon topographical conditions, the density of population and the requirements of production. The normal constituents of a Commune would be 6,000 to 7,000 families. Property and assets of the agricultural co-operatives forming a Commune have to be transferred to the latter. The share-funds contributed by the members of the co-operative remain registered in their respective names but do not bear any interest. The individual members of co-operatives have to transfer to the Commune all privately-owned plots of farmland and house sites and other means of production such as livestock, tree-holdings, etc. These are regarded as the private investment of the co-operative members. In special cases, members may be allowed to retain a few domestic animals and fowls as personal property. Individual cultivators must turn over all lands, animals and farm implements.

The Communes are managed by a Congress elected from and by the members. The day to day business is looked after by a Committee elected by the Congress. It consists of a head, several deputy heads and other members. Under the Committee, there are departments and commissions each in charge of different works such as agriculture, water conservancy, forestry, animal

husbandry, industry and communications, finance and food supply, commerce, cultural and educational work, internal affairs and labour power, armed defence, planning and scientific research. A supervisory committee, linked with the central people's procuratorate, supervises the work of the Commune. The term of office of the members of the Commune congress, committee and the supervisory committee is two years.

Administered under a centralised leadership, the members of the commune are organised under a number of production contingents which are further divided into production brigades which are the units for managing production, organising labour and keeping accounts. Each contingent has a representative conference consisting of members deputed to the people's commune congress from each. The conference elects a managing committee. The term of the managing committee and the contingent supervisory committee is one year.

Generally speaking, there is one Commune for one *Hsiang* which is the lowest administrative level under the Chinese Constitution of 1954. Ultimately, the goal is to make *Hsien* or county as a basic unit of a Commune. There are a number of advantages in combining *Hsiang* and the Commune in a single entity. The government is transformed from a purely administrative machinery into a business accounting unit controlling production, finance, distribution, allocation of supplies and distribution of labour power throughout *Hsiang*. A greater concentration of manpower and the material and financial resources in the *Hsiang* offers a better opportunity to undertake principal construction projects and solve other problems which are beyond the means of the co-operatives. The stronger mass bases and the greater rationalisation of organisation ensure better collection of State taxes. The Commune simply deducts the amount of tax and loan instalments from its annual income. The fusion of the organisation of the Commune and the Government brings about retrenchment in the organisational structure and reduces non-productive expenditure. It engenders greater collective consciousness as people, being partners in a wider enterprise, are gradually cured of their narrowness of outlook.

According to the decision of the Communist Party of China, the township committee of the party becomes the party committee of the Commune.

Though the Commune is formed through the merger of co-operatives, it differs from the latter in many respects. The Commune is much bigger and unlike the co-operatives, does not restrict itself to agricultural production. The Commune combines industry, agriculture, exchange, culture and education, military and political affairs. The establishment of a Commune signifies a definite step forward towards the goal of communisation of all landed property. The distribution system is different from that under the co-operatives. The changes in the family life brought about by the Communes through the establishment of creches.



happy homes, and public canteens promise a revolutionary social change.

An interesting feature of the Chinese Communes is the establishment of community kitchens. Women have been freed from the drudgery of cooking. Everybody can go to the community kitchen and eat and thus a lot of time is saved. Provisions have also been made for the washing of clothes at one place.

The advantages claimed for the Communes are the consolidation of collective ownership and the development of collective consciousness, acceleration of the process of industrialisation in so far as the Communes are also industrial units, greater mechanisation of agriculture, facilitation of larger capital construction, creation of a multipurpose economy, better distribution of the labour force, better training of government functionaries, development of the cultural life of the people, organisation of better resistance to natural calamities and the achievement of higher production yields and strengthening the leadership of the Communist Party in the rural areas.

### Comparison of Soviet Constitution with Chinese Constitution

A critical comparison of the Constitutions of the Soviet Union of 1936 with that of Red China of 1954 shows that there are certain similarities and differences between the two systems. As regards the resemblances, it is pointed out that the underlying philosophy and the overall structure of the two Constitutions are the same. However, some allowance has to be made for certain local variations on account of socio-economic conditions, historical perspective and political expediency. As a matter of fact, the Constitution of China has gone ahead of the Soviet Constitution in accepting some of the basic principles of Marxism. This is so in the case of the adoption of a unicameral legislature known as the National People's Congress and a unitary system of government and extension of the principle of democratic centralism to the organisation of the legislatures. We find in both the Constitutions the dictatorship of the proletariat and people's democracy. There is the predominance of the Communist Party in both the countries. There is also the same democratic centralism running through the organisation of the Communist Party, State organs, economic planning and almost every social and economic aspect of Chinese life. In both the countries, there is the same party government integration and the same relegation into the background of the National People's Congress consisting of about 1,226 members. Like the Presidium of the Supreme Soviet in the U.S.S.R., the Chinese Standing Committee is authorised to interpret laws, adopt decrees, supervise the work of State Council and annul its decisions and orders.

Article 31 of the Chinese Constitution dealing with the powers of the Standing Committee is modelled on Article 49 of the Soviet Constitution which deals with the powers of the Presidium. However, whereas in the Soviet Constitution, it is on the recommendation of the Chairman of the Council of Ministers of the



U.S.S.R. and subject to subsequent confirmation by the Supreme Soviet of the U.S.S.R. that the Presidium has been empowered to release and appoint Ministers, no such recommendation or subsequent confirmation is required in the exercise of similar powers by the Standing Committee in China. In the Chinese Constitution, the Nationalities and Bills Committees of the National People's Congress are put under the direction of the Standing Committee when the National People's Congress is not in session. No similar power is enjoyed by the Soviet Presidium. The National People's Congress of China can vest in its Standing Committee other functions and powers which are enumerated in the Constitution. No corresponding provision exists in the Soviet Constitution. When the National People's Congress is not in session, its Standing Committee is authorised to appoint commissions of enquiry for the investigation of specific questions. However, in the Soviet Union this power has not been delegated to the Presidium in the intervals between the sessions of the Supreme Soviet.

Though formally responsible to the National People's Congress and has to report to it, the Standing Committee can actually become its master and use it as a mere rubber-stamp and secure the endorsement of its own decisions and policies. The very large size of the membership of the National People's Congress, the predominance of the Communist Party in it, the harmony between the National People's Congress and the Standing Committee on account of their Communist Party complexion, the infrequency and the short duration of the sessions of the National People's Congress are likely to reduce it to a merely formal and ceremonial institution, the real power coming in the hands of the Standing Committee. However, on account of the influence of the all-powerful Communist Party it may not be possible for the Standing Committee to act independently of the party leadership. In a Communist Constitution, all organs of the Government have to carry out the policy laid down by the Communist Party and they do not enjoy any independence. They have merely to carry out the programme laid down by the Communist Party.

The Constitution of China puts emphasis on the sovereignty of the people. It is specifically provided in the Constitution that all power in China belongs to the people. As a proof of the sovereignty of the people, it is pointed out that there were innumerable discussions from various forums of the draft Constitution before the same was adopted. However, critics point out that all this must have been merely a show because practically no change of substance was made in the draft Constitution as a result of those discussions. Everything was merely ceremonial. A similar thing had attended the framing and adoption of the Soviet Constitution of 1936 which was merely the handiwork of one man, Stalin.

It is pointed out that the Chinese Constitution does not provide only for State ownership of the means of production. There is also provision for co-operatives, ownership by individual work-



ing men and capitalist ownership. While doing so, the Chinese Constitution does not materially differ from the Soviet Constitution. It is clearly stated in the Chinese Constitution that gradually all other forms of ownership will be eliminated and only the State ownership will ultimately remain. Even today, the State sector is the most important. To quote Liu Shao Chi, "China will change either into a Socialist or a capitalist State.... The road along which China could change into a capitalist State is barred. Therefore, the road to socialism is the only bright road for her to take. She has to take this road because this is the law of China's historical development."

The Soviet Constitution describes the Soviet State as a "socialist State of workers and peasants." The Chinese Constitution describes the Chinese State as a "People's democratic state led by the working class and based on the alliance of workers and peasants." However, there does not seem to be any substantial or material difference between the two.

As regards the *differences* between the Constitutions of the Soviet Union and Red China, the office of the Chairman of the Chinese People's Republic is unique. It cannot be compared with the President of the U.S.S.R. as unlike the former, the latter does not enjoy any independent constitutional status or power. As a matter of fact, there is no provision for the President of the U.S.S.R. The President of the Presidium of the Supreme Soviet of U.S.S.R. is commonly referred to as the President of the Soviet Union. However, in the eye of law, the Presidium of the Soviet Union consisting of 32 members is a sort of collective President of the State. So far as the Chinese Constitution is concerned, there is a specific provision dealing with the Chairman of the People's Republic of China. He is to be the Chairman for four years and he is to be elected by the National People's Congress. He has been given powers and functions which can be exercised without any reference to the National People's Congress. Article 42 of the Constitution makes the Chairman the commander of the Armed Forces. He is also described as the Chairman of the Council of National Defence. Article 43 of the Constitution gives the Chairman the power to convene, whenever necessary, a Supreme State Conference with himself as its Chairman. The Chairman has to submit the views of the Supreme State Conference to the National People's Congress, the Standing Committee, the State Council and other bodies concerned for their consideration and decision. By making a provision for the Chairman of the Republic of China, the Chinese Constitution has discarded the theory of "collective President".

The Office of the Vice-Chairman of the Chinese Republic is not known to the Soviet Constitution. There is no such institution as the Supreme State Conference in the Soviet Union. The actual position and powers of the Supreme State Conference have not been explained in the Chinese Constitution. It is supposed to be a deliberative and advisory body. However, as the top leaders of the Communist Party are the members of the Supreme

State Conference, it is bound to dominate both the legislature and the executive.

The Soviet Union has a federal form of Government. The various units have been given certain powers. However, the Chinese Constitution provides for a unitary form of Government for Red China. The unitary system of China differs from other unitary systems in the sense that there is provision for the establishment of legislatures for the Provinces and other smaller units.

The Soviet Union provides for a bicameral legislature. The two Houses are named as the Soviet of the Union and the Soviet of Nationalities. The Chinese Constitution provides for a unicameral legislature. The National People's Congress is the only legislature consisting of as many as 1,226 members elected indirectly by Provinces, autonomous regions, municipalities directly under the Central authority, the armed forces and the Chinese resident abroad. It is noteworthy that elections in China are mostly by show of hands and not by means of a secret ballot. Under the circumstances, it is easy for the Communist Party to control the elections. There is enough of scope for the exercise of pressure, undue influence and intimidation.

**Communist Party of China.** The Communist Party of China is the vanguard of the Chinese working class, the highest form of its class organisation. Its present Constitution was adopted on 26th September, 1956, and that superseded the Constitution of 1945.

This Party was able to overthrow the Government of Chiang-Kai-Shek in 1949 after a long revolutionary struggle. At present, the aim of the Party is the achievement of socialism and communism in China. The Party takes Marxism-Leninism as its guide to action. It adheres to the Marxist-Leninist world outlook of idealism and metaphysics.

During the period of transition from the founding of the People's Republic of China to the attainment of a socialist society, the fundamental task of the Party is to complete, step by step, the socialist transformation of agriculture, handicrafts and capitalist industry and commerce and to bring about, step by step, the industrialisation of the country. It is the task of the Communist Party of China by continuously adopting correct methods to transform what now remains of capitalist ownership into ownership by the whole people, transform what remains of individual ownership by working people into collective ownership by the working masses, uproot the system of exploitation and remove all the causes which give rise to such a system. In the process of building up a socialist society, the principle of "from each according to his ability, to each according to his work" should be brought into effect step by step. All former exploiters should be reformed in a peaceful manner to become working people living by their own labour. The Party has to continue to pay attention to the elimination of capitalist factors and influence in the economic, political and ideological fields and make determined efforts to



mobilise and unite all the positive forces throughout the country for winning a complete victory for socialism.

It is the task of the Communist Party of China to develop the national economy in a planned way in order to bring about, as rapidly as possible, the industrialisation of the country and to effect the technological transformation of the national economy in a planned and systematic manner so that China may possess a powerful modernised industry, a modernised agriculture, modernised communications and transport and a modernised national defence.

The Communist Party of China is required to do everything possible to stimulate the progress of China in science, culture and technology so that China can catch up with the world's advanced levels in these fields. The basic object of all the work of the party is to satisfy to the maximum extent the material and cultural needs of the people.

The Communist Party of China is required to make special efforts to raise the status of the national minorities, help them to attain self-government, endeavour to train cadres from among the national minorities, accelerate their economic and cultural advance, bring about complete equality between all nationalities and strengthen the unity and fraternal relations among them. The Communist Party opposes all tendencies to great nation chauvinism and local nationalism.

The Communist Party of China is required to work hard to consolidate Chinese People's Democratic Dictatorship. It is the guarantee for the success of socialist cause in China. The Party must fight for a fuller development of the democratic life of the nation and strive for the constant improvement of its democratic institutions. The Party must work in every way to fortify the fraternal alliance of workers and peasants, to consolidate the united front of all patriotic forces and to strengthen its lasting cooperation with the other democratic parties. It is the duty of the Party to be more vigilant and wage severe struggles against those forces which endanger the independence and security of the country. The Party must work together with the people of the whole country to bring about the liberation of Formosa.

The Communist Party of China supports the struggle of the Communists, progressives and the labouring people of the whole world for the progress of mankind and educates its members and the Chinese people in the spirit of internationalism as expressed in the slogan: "Proletarians of all lands, unite!"

Every party member must understand that the interests of the Party and those of the people are one and responsibility to the Party and responsibility to the people are identical. Every Party member must whole-heartedly serve the people, constantly consult them, pay heed to their opinions, concern himself with their well-being and strive to help realize their wishes.

The Communist Party of China is a united militant organisa-



tion, welded together by a discipline which is obligatory on all its members. Solidarity and unity are the very life of the Party, the source of its strength. It is the sacred duty of every Party member to pay constant attention to the safeguarding of the solidarity of the Party and the consolidation of its unity. Within the Party, no action which violates Party's political line or organisational principles is permissible nor is it permissible to carry on activities aimed at splitting the Party or factional activities, to act independently of the Party, or to place the individual above the collective body of the Party.

The Communist Party of China requires all its members to place the Party's interests above their personal interests, to be diligent and unpretentious, to study and work hard, to unite the broad masses of the people and to overcome all difficulties in order to build China into a great, mighty, prosperous and advanced socialist State.

The Communist Party of China is formed on the principles of *democratic centralism*. Democratic centralism means centralism on the basis of democracy and democracy under centralised guidance. Its basic conditions are the following: The leading bodies of the Party at all levels are elected. The highest leading body of the Party is the National Party Congress and the highest leading body in each local Party organisation is the Local Party Congress. The National Party Congress elects the Central Committee and the Local Party Congress elect their respective Local Party Committees. The Central Committee and Local Party Committees are responsible to their respective Party Congresses to which they should report on their work. All leading bodies of the Party must pay constant heed to the views of their lower organisations and the rank-and-file Party members, study their experiences and give prompt help in solving their problems. Lower Party Organisations must present periodical reports on their work to the Party organisations above them and ask in good time for instructions on questions which need decision by higher Party organisations. All Party organisations operate on the principle of combining collective leadership with individual responsibility. All important issues are to be decided collectively. At the same time, each individual is enabled to play his part to the fullest extent. Party's decisions must be carried out unconditionally. Individual Party members shall obey the Party organisation. The minority shall obey the majority. The lower Party organisations shall obey the highest Party organisations. All constituent Party organisations throughout the country shall obey the National Party Congress and the Central Committee.

Membership of the Communist Party of China is open to any Chinese citizen who works and does not exploit the labour of others, accepts the programme and constitution of the Party, joins and works in one of the Party organisations, carries out the Party's decisions and pays membership dues as required.

Party members have certain duties and rights. Their duties



are to safeguard the solidarity of the Party and consolidate its unity, to carry out the policy and decisions of the Party and energetically fulfil the tasks assigned to them by the Party, to place the interests of the Party and the State above their personal interests, to serve the masses of the people whole-heartedly, to set a good example in their work and constantly raise their productive skill and professional ability, to be truthful and honest to the Party and not to conceal or distort the truth and to be constantly on the alert against the intrigues of the enemy and to guard the secrets of the Party and the state. The *rights* of the Party members are to participate in free and practical discussion at Party meetings or in the Party press on questions relating to Party policy, to make proposals regarding the Party's work and give full play to their creative ability in their work, to elect and be elected within the Party, to criticise any Party organisation or any functionary at Party meetings, to reserve their opinions or to submit them to a leading body of the Party in case they disagree with any Party decision which, in the meanwhile, they must carry out unconditionally and to address any statement, appeal or complaint to any Party organisation up to and including the Central Committee.

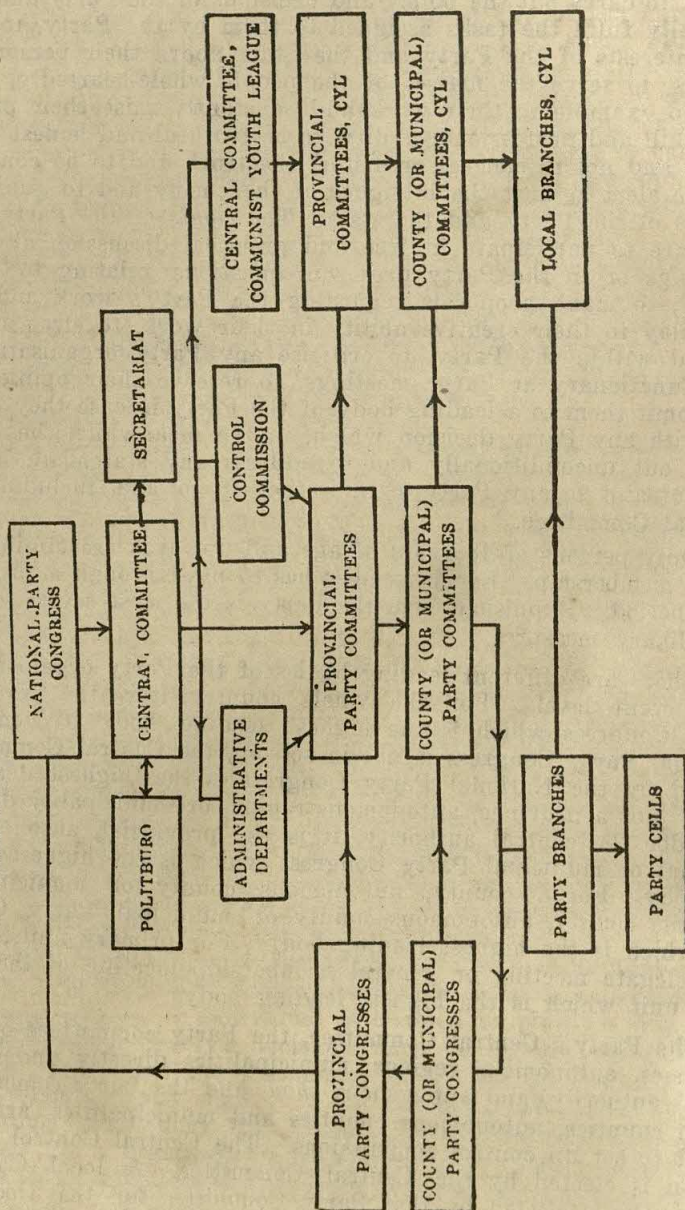
Only persons of 18 years of age and upwards are eligible for Party membership. Every member has to pass through a probationary period. Expulsion from the Party is the most severe of all disciplinary measures.

There are different leading bodies of the Party organisations at different levels. For the whole country, it is the National Party Congress which is the highest leading body. When the National Party Congress is not in session, the Central Committee elected by the National Party Congress is the highest leading body. For a province, autonomous region, or municipality directly under the central authority, it is the provincial, autonomous regional or municipal Party Congress which is the highest leading body. For a county, autonomous county or municipality it is the county, autonomous county or municipal Party Congress which is the highest leading body. For primary units, it is the delegate meeting or general membership meeting of the primary unit which is the highest leading body.

The Party's Central Committee, the Party committees of the provinces, autonomous regions, municipalities directly under the central authority, and autonomous *chou*, and the Party committees of the counties, autonomous counties and municipalities are required to set up control commissions. The Central Control Commission is elected by the Central Committee. A local Control Commission is elected by that Party Committee for that locality. The Control Commissions at all levels function under the directions of the Party Committee at corresponding levels.

The Communist Youth League of China carries on its activities under the guidance of the Communist Party of China. The Communist Youth League is the Party's assistant. In all spheres

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of socialist construction, Communist Youth League organisations are required to play an active role in publicising and carrying out Party policy and decisions. In the struggle to promote production, improve work and expose and eliminate shortcomings and mistakes in work, the Communist Youth League organisations are required to render effective help to the Party.

There are two major factions within the upper ranks of the Communist Party of China. One is led by Liu-Shao-Chi and the other by Chou En-lai. Mao Tse-tung uses his influence and prestige to arbitrate between the two factions and keep them working together. Nobody knows what will happen after his death.

The Communist Party of China is thoroughly irreligious. However, it is realised that the influence of religion on the minds of human beings cannot be lessened or destroyed by the use of force. The result is that so far as indigenous cults, which have no foreign affiliations, are concerned, those have been severely suppressed. Islam and Buddhism have been treated with extreme outward defence. So far as Christianity is concerned, foreign missionaries have been harshly treated but there are a few who are still at their stations. Chinese clergy and converts have been put under severe pressure to cut all their ties with their co-religionists abroad. Those who have refused to do so have been severely punished.

The Communist Party of China ensures its control over the machinery of the Government in many ways. The first and most significant is the placing of high ranking members of the Communist Party of China in all really important governmental positions. Another method is the establishment of the party organisations of the Communist Party within governmental agencies. A third method is the custom of issuing important directives on domestic policy jointly in the name of the Central Committee of the Communist Party and the State Council which guarantees the prior approval of the Central Committee. In reality, even without this device all major administrative measures would in any case be first discussed and approved by the central organs of the Communist Party, usually the Politburo or its Standing Committee. Another method of control is that the Constitution vests in the Standing Committee of the National People's Congress the power to supervise and when necessary to change or annul actions by all levels of the governmental apparatus.

There are several ways by which the Communist Party ensures its control over the armed forces. One is the virtual monopoly which the members of the Communist Party of China hold of important command and staff positions. Many civilian officials of the Communist Party have had considerable military experience. Each Commander of the Communist Party down through the company level has a political officer (commissar) who is a member of the Communist Party and whose approval of all orders is required except in times of military emergency. Each political officer also supervises a political department or



section whose main function is to ensure the indoctrination of men. Within most military units, there are also party committees led by the chief members of the Communist Party within each unit. So closely inter-twined are the Communist Party of China and the armed forces that a conflict within them is almost unthinkable.

Although it is difficult to measure the amount of popular support which the Communist Party of China enjoys, yet it cannot be denied that it does enjoy a very considerable measure of passive popular support. As the Party is firmly in power, no ordinary career in Communist China is possible except for one who obeys the Communist Party. There does not appear to be any alternative in the future. However, the level of active support or genuine enthusiasm may be much lower. This must not blind us to the fact that the Communist Party has managed to get the support of the people by fair or foul means.

According to Peter S. H. Tang, the Communist Party of China has a very intimate relationship with the machinery of the Government. The men and women of the Party occupy the key positions in all the manifold activities in the political, social and economic life of the country. "Standing midway between the government and the public at large and containing within its own ranks the leading and influential elements from both spheres, the Party can thus extend its control into the traditionally private and voluntaristic sectors of society to get support for and co-operation with its policies, without having to rely entirely on the compulsory and coercive measures of governmental regulation. At the same time, through the extensive integration of personnel in the parallel hierarchies of Party and government, the Party can reach into the councils and agencies of government to make sure that the decisions taken there conform to its own aims and policies. Thus the Communist Party of China exercises immense power in its present dictatorship on the Chinese mainland." (*Communist China Today*, p. 162.)

A critical study of the Constitution of Communist China shows that China has a military dictatorship. The Communist Party of China controls every aspect of life of the people. In spite of what is contained in the Constitution, the people have no freedom. They have to do what they are ordered to do by the State which is controlled by the Communist Party of China. It is this Military Dictatorship which has enabled China to marshall all her resources and put them at the disposal of the State. That partly explains the progress made by China in so short a period. The price which the people of China have paid is known to all.

Whatever the professions made by the leaders of Communist China and whatever the language in which their Constitution is couched, the fact remains that Communist China is a naked Military Dictatorship which stands for Chinese expansion in all directions at all costs. No principles of morality and no regard for world public opinion can stand in the way of the achieve-



ment of their objectives. The Chinese leaders seem to believe that expansion of their country is the only thing which must be kept in view regardless of any other consideration.

The prolonged struggle for power after which the Communists have captured power in China has hardened its leaders and given them great faith in force. It must not be forgotten that it was with the help of force that the Communists were able to defy the Kuomintang regime in China. The Communist leaders like Mao, and Liu were the leaders of military revolts in various parts of China for decades. They were able to recruit and equip millions of soldiers in their life and death struggle for power.

It is the duty of every Indian to realise the gravity of the situation. We have to face the danger not from an ordinary State which will not go to war on petty issues. We have to face a country whose leaders have a lot of experience of war and who believe that all that they wish to achieve can be achieved by sheer force. The only way to meet the danger is to train millions of soldiers and thousands of Generals who alone can be equal to the situation. The Constitution of China does not stand in the way of the Communist leaders in doing whatever they please. It merely places all the resources of the country in the hands of Mao and his colleagues.

### SUGGESTED READINGS

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|--|--|
| <i>Agarwala, A. N.</i>                               | : The Government and Politics of China.  |
| <i>Boorman, H. L.</i>                                | : Contemporary China and the Chinese, 1959.  |
| <i>Gluckstein, Yagel</i>                             | : Mao's China. Economic and Political Survey<br>London, 1957.  |
| <i>Hinton, Ike, Palmer,<br/>Callarad &amp; Kahin</i> | : Major Governments of Asia. New York, 1958.<br>(Governments of China, Japan, India,<br>Pakistan and Indonesia). |
| <i>Lineburger, Chu &amp; Burks</i>                   | : Far Eastern Governments and Politics: China and<br>Japan. New York, 1954.                                      |
| <i>Liu Shao-Chi</i>                                  | : Report on the Draft Constitution. Peking, 1954.  |
| <i>Mao Tse-Tung</i>                                  | : The Chinese Revolution and the Chinese Com-<br>munist Party.   |
| <i>Mao Tse-Tung</i>                                  | : On People's Democratic Dictatorship, Peking,<br>1952.  |
| <i>Moraes, Frank</i>                                 | : Report on Mao's China. New York, 1953.   |
| <i>Mukherjee, Sailakumar</i>                         | : A Visit to New China. Calcutta, 1956.  |
| <i>Perleberg, Marx</i>                               | : Who is Who in Modern China.  |
| <i>Quigley, H. S.</i>                                | : China's Politics in Perspective. Bombay, 1962.   |
| <i>Sundarlal</i>                                     | : China To-day.  |
| <i>Tang, Peter S. H.</i>                             | : Communist China Today. New York, 1958.   |
| <i>Townsend, Peter</i>                               | : China Phoenix. The Revolution in China. London,<br>1955.   |
| <i>Tung Pi-Wu</i>                                    | : New China Advances to Socialism.   |

## CHAPTER 27

### THE CONSTITUTION OF PAKISTAN

#### Making of the Constitution

The Indian Independence Act of 1947 established the Dominions of Pakistan and India. The Act also made a division of the Constituent Assembly. The members representing the Pakistan areas were formed into a separate Constituent Assembly for the Dominion of Pakistan. A provision for the adaptation of the Government of India Act, 1935 was also made to serve as a Constitution for Pakistan.

The Constituent Assembly of Pakistan could not make much headway in the direction of constitution-making for about two years on account of many difficulties. However, in March 1949, an Objectives Resolution was passed by the Constituent Assembly. It was stated therein that sovereignty belongs to God, but it will be exercised in Pakistan by the people according to the dictates of the Quran and Sunnah. Pakistan was to be a federation. Principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam, were to be fully observed. The State was to exercise its power and authority through the chosen representatives of the people. The rights and legitimate interests of the minorities were to be protected and the minorities were to be free to profess and practice their religion and develop their culture. All the citizens of Pakistan were to be granted equal fundamental rights to be incorporated in the Constitution. The legitimate interests of the backward and depressed classes were to be safeguarded. The judiciary was to be independent.

After the passing of the Objectives Resolution, the Constituent Assembly set up a committee to frame an outline of and the main principles of the new Constitution. The committee was known as the Basic Principles Committee. The latter set up four sub-committees such as Fundamental Rights Sub-Committee, Judiciary Sub-Committee, etc. On 21st November, 1950 the interim report of the Basic Principles Committee was submitted to the Constituent Assembly. It was recommended in the report that there should be a Head of the State elected by a joint session of both the Houses of the Central Legislature. It was not necessary that the Head of the State of Pakistan must be a Muslim. There was to be a Central Legislature consisting of two Houses, the House of Units and the House of Peoples. The Cabinet was made responsible to the Federal Legislature. The Head of the State was given the power to suspend the whole or a part of the Constitution. The Interim Report was severely criticised by the leaders and people of East Bengal. Their main contention was that the majority of East Bengal was permanently transformed into a minority.



On 22nd December, 1952, the Report of the Basic Principles Committee was presented to the Constituent Assembly by Khwaja Nazimuddin, who had succeeded Mr. Liaqat Ali Khan as Prime Minister. It was recommended that the legislature of Pakistan was to consist of two Houses: the House of Units and the House of Peoples. The Boards of Ulemas were to be set up. Their duty was to see that the laws passed by the Federal and Provincial Legislatures were in conformity with the principles of Islam as enunciated in the Quran and the Sunnah. The Cabinet was to be responsible only to the Lower House of the Federal Legislature.

The Report of the Basic Principles Committee was criticized from all quarters. The anti-Ahmadiya agitation could not be tackled by the ministry in power. The food crisis threatened the country. Taking advantage of all these factors, Mr. Ghulam Mohammad, the then Governor-General of Pakistan, dismissed Khwaja Nazimuddin and his cabinet. There was a lot of confusion, and ultimately Mr. Mohammad Ali of Bogra was appointed Prime Minister of Pakistan.

The new Prime Minister was able to solve successfully the question of distribution of seats between East Pakistan and West Pakistan. East Pakistan was given 183 seats in both Houses of the proposed Federal Parliament and all the provinces of West Pakistan were also given 183 seats in the Federal Legislature. Although East Bengal was given only 10 seats in the Upper House, parity was maintained in both Houses taken collectively. Both Houses of Parliament were to have equal powers and a deadlock was to be resolved by a joint sitting. The necessary majority in a joint session had to include 30 per cent of the members of each wing.

Elections were held in Pakistan and the Muslim League was defeated in East Pakistan. The result was that the representative character of the first Constituent Assembly became doubtful and suggestions were made for the dissolution of the Constituent Assembly or the replacement of the members from East Pakistan. There were also differences amongst the members of the Muslim League (which was ruling at that time) over the important provisions of the proposed constitution. There was a demand for the dissolution of the Constituent Assembly. In order to avoid the intervention of the Governor-General, Mr. A. K. Brohi introduced on 3rd August 1954 an Act called the Constitution Amendment Act of 1954. The object of that Act was to declare the absolute sovereignty of the Constituent Assembly for purposes of constitution-making. All courts of Pakistan, including the Federal Court, were rendered incompetent to question, directly or indirectly, or declare invalid any provisions affecting the Constitution framed by the Constituent Assembly. Many laws were passed by the Constituent Assembly with a view to curtail the powers of the Governor-General and thereby render him ineffective against the Constituent Assembly.



After curtailing the powers of the Governor-General, the Constituent Assembly adopted the amended Basic Principles Committee Report by 29 to 11 votes. It was declared by the Prime Minister that discussion on the draft constitution would be finished by 25th December, 1954, and the new constitution would be adopted on Qaid-i-Azam's birthday. He also declared that Pakistan would become a Republic on 1st January, 1955. After these declarations, the Constituent Assembly was adjourned till 27th October, 1954. The Report of the Basic Principles Committee was sent to the Drafting Committee of constitutional experts. On 16th October, 1954, the draft constitution was sent for printing so that it would be in the hands of the members of the Constituent Assembly on 27th October, 1954.

However, on 24th October, 1954, the Constituent Assembly was dissolved by the Governor-General by means of a proclamation. It was declared in the proclamation made by the Governor-General that the Constituent Assembly had lost the confidence of the people and hence there was the necessity of fresh elections. Mr. Mohammad Ali of Bogra formed a new cabinet on the invitation of the Governor-General and men like Iskander Mirza, H. S. Suhrawardy, and Dr. Khan Sahib were included in the cabinet. Maulvi Tamizuddin Khan, President of the dissolved Constituent Assembly, challenged the legality of the proclamation of the Governor-General in the Chief Court of Sind. A full bench of the Chief Court of Sind decided the case in favour of Maulvi Tamizuddin Khan. The government went in appeal to the Federal Court of Pakistan which reversed the decision of the Chief Court of Sind.

To begin with, the Governor-General decided to call a Constitutional Convention to frame the Constitution for Pakistan. However, on the advice of the Federal Court of Pakistan, the idea of calling a Constitutional Convention was given up and orders were passed on 28th May, 1955, for electing members of the Second Constituent Assembly of Pakistan. The new Constituent Assembly was to consist of 80 members who were equally divided among the two wings of Pakistan. On the occasion of new elections, the Muslim League did not do well. It was able to capture only 25 seats in the new Constituent Assembly. 16 seats were won by the United Front and 13 by the Awami League, 11 by the minority communities and 7 members of the Constituent Assembly were independent. There was a lot of tussel between the Muslim League on the one side and the other parties on the other. There was a coalition government between the Muslim League and the United Front at the Centre. All the provinces and states of West Pakistan were merged into one unit.

The first session of the second Constituent Assembly was held in July 1955 at Murree. However, no work was done on account of the various difficulties facing the Constituent Assembly. The second session of the Constituent Assembly was held in August 1955. On 8th January, 1956, the Constitution Bill was published by the government. It was piloted in the Constituent Assembly



by Mr. I. I. Chundrigar, the Law Member at that time. The Constitution was adopted on 29th February 1956. It was also decided to enforce the new constitution on 23rd March 1956, the Pakistan Day, and the constitution actually came into force from 23rd March, 1956.

### Constitution of Pakistan (1956)

(1) The Constitution of Pakistan of 1956 had a Preamble. It was declared therein that the people of Pakistan had decided to constitute the people of Pakistan into a sovereign peoples' State based on Islamic principles of social justice. The aims of the new State were described to be to secure for all citizens the freedom, equality, tolerance and social justice as enunciated by Islam. It was also declared that sovereignty belongs to the Almighty alone. The authority of the people was a sacred trust from *Allah* to be exercised within the limits prescribed by Him. Legislative and executive action was liable to be impugned for repugnancy to the fundamental rights which formed a part of the new constitution.

(2) A provision was made in the constitution for directive principles of State policy. Their provisions could not be enforced in any court, but those were declared to be binding on all organs of government and all persons holding public office.

(3) The Governor-General was replaced by an elected President. Special restrictions were placed on the legislative and executive powers of the Federation of Pakistan and the provinces constituting the federation. The two units of the Federation of Pakistan were put on a footing of equality. Provision was made for further accessions to the territory of Pakistan but not for cessation.

(4) Provision was made for a National Economic Council and a Finance Commission. Both the Federal Government and the Provincial Governments were given representation on the National Economic Council and the Finance Commission. It was to be the duty of the National Economic Council to formulate an economic policy for Pakistan. The Finance Commission was to decide how the proceeds of distributable taxes were to be apportioned between the Centre and the provinces.

(5) A provision was made for three legislative lists providing for the division of powers between the Federal Government and the provinces. The residuary powers were given to the provinces. All legislatures were to be unicameral. It was for the Parliament to decide whether there was to be any communal representation or not, and ultimately it was decided in the negative.

(6) Provision was made for the Supreme Court of Pakistan and the High Courts of the provinces. The courts were empowered to issue prerogative writs. The courts were made the guardians and interpreters of the constitution. They were given the power to declare void all acts which violated the constitution. Although a federal form of government was set up in Pakistan,



actually Pakistan came to have a unitary State. Too many powers were given to the President to be exercised at the time of emergency.

(7) The form of government provided for was the parliamentary form of government. It was the duty of the President of Pakistan to act on the advice of his ministers.

(8) Provision was made for only one citizenship of Pakistan and there was no provision for a separate citizenship of a constituent state of Pakistan. In America, we have a dual citizenship. An individual is a citizen of his own state and at the same time a citizen of the United States. Provision was made for a single integrated judiciary, uniform civil and criminal law and common all-Pakistan services. Provision was made for giving all the powers to the President at the time of a national emergency. On such an occasion, the Federal Government was to become all-powerful.

(9) The Constitution of Pakistan was not rigid. The Constitution could be amended by making some of the Articles of a temporary duration to remain in force until Parliament by law otherwise provided. Provision was also made for conferring concurrent powers of legislation both to the Centre and the Provinces.

(10) Provision was made in the Constitution for fundamental rights. The fundamental rights guaranteed by the Constitution were the right to equality, protection against retrospective offences or punishment, safeguards against arrest and detention, freedom of speech, freedom of assembly, freedom of association, freedom of movement, right to hold and dispose of property, freedom of trade, business or provision for cultural and educational rights, right against exploitation and the right to constitutional remedies. Regarding these fundamental rights, A. K. Brohi has observed thus: "These rights are fundamental not only in the sense that they have been mentioned it and guaranteed by the Constitution but are such as neither the Legislature nor the Executive can in any manner curtail or diminish. These rights limit legislative and executive power and are a clog on the 'temporary' will of the 'simple' majority in the Legislature. They embody a permanent and paramount law which cannot be disturbed by the will of Legislature or Executive. It can only be undone by the Nation and the People by recourse to the extraordinary method of effecting constitutional amendment as provided in Art. 216 of our Constitution.

"These fundamental rights that have been constitutionally guaranteed operate like a double-edged sword: they not only destroy those portions of 'existing law' which are in conflict with these rights but they operate also to render void any State action (whether in the legislative or executive fields) which after the coming into force of the Constitution has the effect of taking away or abridging any of the fundamental rights. Any law passed in



contravention of the rights preserved by Part II of our Constitution to the extent of such contravention, would be void”.

The Pakistan Constitution of 1956 did not work satisfactorily. There were complaints from all quarters. The result was that on 7th October 1958, the Government was taken over by Field Marshal Mohammad Ayub Khan. Martial law was declared all over the country and every effort was made to cleanse the politics of Pakistan.

On 17th February, 1960, a Commission was appointed by Field Marshal Mohammad Ayub Khan to examine the progressive failure of the parliamentary government in Pakistan leading to the abrogation of the Constitution of 1956, to determine the causes and the nature of the failure, to consider how best the said or like causes could be identified and their recurrence prevented, and also to make recommendations regarding the future Constitution of Pakistan. After a lot of labour, the Commission submitted its report on 29th April, 1961. A Constitution was drafted for Pakistan and the same came into force on 8th June, 1962.

### **SALIENT CHARACTERISTICS OF THE CONSTITUTION (1962)**

(1) The Constitution of Pakistan has a Preamble. It is stated therein that sovereignty over the entire universe belongs to Almighty *Allah* alone and the authority exercisable by the people is a sacred trust. Quaid-i-Azam Mohammad Ali Jinnah declared that Pakistan should be a democratic State based on Islamic principles of social justice. The territories included in Pakistan form a federation in which the provinces enjoy such autonomy as is consistent with the unity and interests of Pakistan as a whole. It is the will of the people of Pakistan that the State should exercise its power and authority, through representatives chosen by the people. The principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, should be fully observed in Pakistan. The Muslims of Pakistan should be enabled, individually and collectively, to order their lives in accordance with the teachings and requirements of Islam. The legitimate interests of the minorities in Pakistan, including their religious and cultural interests, should be adequately safeguarded. The fundamental human rights, including the rights of equality before law, freedom of thought, expression, belief, faith and association and social, economic and political justice, should, consistently with the security of the State, public interest and requirements of morality, be preserved. The independence of the judiciary should be ensured. It is specifically stated in the Preamble that the Constitution has been enacted by Field Marshal Mohammad Ayub Khan, President of Pakistan, in exercise of the mandate given to him by the people of Pakistan.

(2) The State of Pakistan is a republic. It consists of the two provinces of East Pakistan and West Pakistan and such



other States and territories as may be included in Pakistan, whether by accession or otherwise.

It is to be noted that originally the Pakistan Constitution was not designated as 'Islamic.' However, on December 25, 1963, in response to pressure by religious interests, the National Assembly amended the Constitution and Pakistan became "Islamic Republic."

(3) Pakistan has a federal form of government. The powers given to the Federal Government alone are given in *Third Schedule* of the Constitution. Those subjects are the defence of Pakistan, external affairs, admission of persons into and departure of persons from Pakistan including immigration and emigration, citizenship, naturalisation, and aliens, trade and commerce between the provinces and with other countries, national economic planning and national economic co-ordination, currency, coinage and legal tender, foreign exchange and negotiable instruments, central banking, public debt of the Centre, stock exchanges and futures market with objects of business not confined to one province, insurance, incorporation, regulation and winding up of corporations, copyright, patents, designs, inventions, trade marks and merchandise marks, navigation and shipping, air navigation and aircrafts, lighthouses and other provisions of safety of shipping and aircraft, declaration and delimitation of major ports and constitution and powers of port authorities, standards of weights and measures, posts including post office savings banks, tele-communications, including broadcasting and television, fishing and fisheries outside territorial waters, nuclear energy, mineral oil and natural gas, industries owned wholly or partly by the Central Government or by a corporation set up by the Centre, property of the Centre, wherever situated, and the revenue from such property, Survey of Pakistan, including geological surveys, meteorology and meteorological observation, national libraries and museums, central agencies and central institutions for the promotion of special studies and specially research, ancient and historical monouments declared to be of national importance, census, central intelligence and investigating organisations, preventive detention for reasons connected with defence, external affairs or the security of Pakistan, elections to the office of President, National Assembly and provincial assemblies, powers, privileges and immunities of the National Assembly, the Supreme Court, the Central Public Service Commission, All-Pakistan Services, and services and posts connected with the affairs of the Centre, tourism, relief and rehabilitation of refugees, duties and taxes such as customs, excise, corporation taxes, estate and succession duties, taxes on sales and purchases, etc. It is to be observed that the Constitution makes the Federal Government very strong. The models of Canada and India have been followed in this respect.

However, an attempt has been made to reconcile the regional demands of East Pakistan which resents the domination of West Pakistan. The Constitution provides for the establishment of the



seat of the National Assembly at Dacca as against the headquarters of the Government of Pakistan at Islamabad in West Pakistan.

Dacca has also been made the second capital of Pakistan. Both Bengali and Urdu have been made the national languages of Pakistan in order to give satisfaction to the people of East Pakistan. Both East Pakistan and West Pakistan have been given equal representations in the National Assembly. Article 16 specifically provides that "Parity between the provinces in all spheres of the Central Government should as nearly as practicable, be achieved".

### Principles of Law-making

(4) The Constitution of Pakistan provides for what are known as the *principles of law-making*. It is the responsibility of each legislature to ensure that no law is made by it if it disregards, violates, or is otherwise not in accordance with these principles. The responsibility for deciding whether a proposed law does or does not disregard or violate or is not otherwise in accordance with the principles of law-making, is that of the legislature concerned. However, the National Assembly, the Provincial Assembly, the President or the Governor of a province may refer to the Advisory Council of Islamic Ideology for advice any question that arises whether a proposed law disregards or violates or is otherwise not in accordance with these principles. The validity of a law shall not be called in question on the ground that the law disregards, violates or is otherwise not in accordance with the principles of law-making.

The principles of law-making include that no law shall be repugnant to Islam. All citizens shall be equal before the law, be entitled to equal protection of the law and be treated alike in all respects. This principle can be departed from where in the interest of equality itself, it is necessary to compensate for existing inequalities, whether natural, social, economic or of any other kind. The same is the case where in the interest of the proper discharge of public functions, it is necessary to give to persons performing public functions, powers, protections or facilities that are not given to other persons or to impose on persons performing public functions, obligations or disciplinary controls that are not imposed on other persons, or where it is necessary in the interests of the security of Pakistan or otherwise in the interest of the State to depart from this principle. When this principle is departed from, it should be ensured that no citizen gets an undue preference over another citizen and no citizen is placed under a disability, liability or obligation that does not apply to other citizens of the same category.

No law should impose any restriction on the freedom of a citizen to give expression to his thoughts. The exceptions can be made in the interest of the security of Pakistan, for the purpose of ensuring friendly relations with foreign States, for the purpose of ensuring the proper administration of justice, in the interest

of public order, for the purpose of preventing the commissioning of offences, in the interest of decency or morality, for the purpose of granting privilege in appropriate cases to particular proceedings or for the purpose of protecting persons in relation to their reputation.

No law should impose any restriction on the freedom of citizens to assemble peacefully and without arms or to form associations or unions. Exceptions can be made to this principle in the interest of the security of Pakistan, in the interest of public order, for the purpose of preventing the commission of offences, in the interest of decency or morality, and for the purpose of protecting persons in relation to their health or property.

No law should impose any restriction of the freedom of a citizen to move throughout Pakistan or to reside or settle in any part of Pakistan. Likewise no restriction should be imposed on the freedom of a citizen to acquire, hold or dispose of property in any part of Pakistan. However, this principle can be departed from where it is necessary so to do in the public interest.

No law should impose any restriction on the freedom of a citizen to engage in any profession, trade, business, occupation or employment, or otherwise to follow the vocation of his choice. This principle can be departed from in the interest of the security of Pakistan, and decency or morality. Likewise, restrictions can be imposed for the purpose of regulating any profession or trade by a licensing system, for ensuring, in the public interest, that where a profession or trade requires any special qualifications or skill only persons possessing those qualifications or skill shall engage in the profession or trade. Restrictions can also be imposed for the purpose of ensuring, in the public interest, that a trade, business, industry or service may be carried on by or on behalf of the State or an organ of the State to the exclusion, in whole or in part, of other persons, or for the purpose of ensuring the development of Pakistan and its resources and industries.

No law should prevent the members of a religious community or denomination from professing, practising or propagating or from providing instruction in, their religion, or from conducting the institutions for the purpose, or in connection with their religion. No law should require any person to receive religious instruction or attend a religious ceremony or religious worship, relating to a religion other than his own. No law should impose on any person a tax the proceeds of which are to be applied for purposes of a religion other than his own. No law should discriminate between religious institutions in the granting of exemptions or concessions in relation to any tax. No law should authorise the expenditure of public moneys for the benefit of a particular religious community or denomination except moneys raised for that purpose.

A law authorising the arrest or detention of persons should ensure that a person arrested or detained under the law is informed of the grounds of his arrest or detention at the time he is



arrested or detained or as soon thereafter as is practicable. He should also be taken before the nearest magistrate within a period of 24 hours after he is arrested or detained, excluding the time necessary to convey him to the magistrate. He should be released from custody at the expiration of that period unless further detention is authorised by a magistrate. He should be at liberty to consult and to be represented and defended by a legal practitioner of his choice. However, this principle does not apply to a law authorising the arrest or detention of enemy aliens or providing for preventive detention, but a law providing for preventive detention should be made only in the interest of the security of Pakistan, or of public safety. It should ensure that the person detained under the law is informed of the grounds of detention at the time he is detained or as soon thereafter as is practicable. It should ensure that a person is not detained under the law for a period longer than three months without the authority of a Board consisting of a judge of the Supreme Court and other senior officers in the service of Pakistan nominated by the President in the case of a Central Law and a judge of the High Court of the province concerned and another senior officer in the service of Pakistan nominated by the Governor of the province, in the case of a provincial law.

No law should authorise the punishment of a person for an act or omission that was not punishable by law at the time the act was done or the omission was made. Likewise, no law should authorise the punishment of a person for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

No law should authorise the compulsory acquisition or the compulsory taking possession of property except for a public purpose. A law that authorises compulsory acquisition or the compulsory taking possession of the property should provide for the payment of compensation for the property and either fix the amount of the compensation or specify the principles on which and the manner in which the compensation is to be determined. These principles may be departed from for the purpose of permitting the destruction, the acquisition or the taking possession of property in order to prevent or reduce danger to life, health or property, for the purpose of ensuring the proper management, for a limited period, of any property for the benefit of its owner, or in relation to property which is or is deemed to be an evacuee property under any law. The term 'public purpose' includes the purpose of acquiring, in the public interest, any industrial, commercial or other undertaking which is of benefit to the public, any interest in such an undertaking or any land for use in connection with such an undertaking.

No law should permit forced labour in any form. This principle may be departed from in relation to the punishment of persons for offences against the law and the compulsory service of persons for public purposes or otherwise in the public interest (whether by way of conscription or in any other way). No law

should, on the ground of race, religion, caste or place of birth, deprive any citizen of the right to attend any educational institution that is receiving aid from public revenues. This principle may be departed from for the purpose of ensuring for a class of citizens that is educationally backward, shares in available educational facilities.

No law should deny to any person access to a public place (other than a place intended solely for religious purposes) on the ground of race, religion, caste or place of birth. No law should prevent any section of the community from having a distinct language, script or culture of its own. No person should permit or in any way facilitate the introduction into Pakistan of slavery in any form. No law should permit or in any way facilitate the introduction into Pakistan of the practice of untouchability in any form.

Originally, the Constitution of Pakistan did not contain any "Bill of Rights" which could guarantee certain basic freedoms and protection to the citizens. However, in the amendment passed in December 1963, such a "Bill" was approved. That bill was a limited one as it did not apply to those living in the Tribal areas. It also made 31 laws and ordinances unchallengeable in any court of law. The protected laws included Frontier Crimes Regulation Act applicable to West Pakistan. Some members of the Opposition criticised the bill as "dishonest piece of legislation" and described the rights provided under it as "truncated and crippled." It is pointed out that the freedom of speech and press are as free as the President of Pakistan wishes, depending upon what he considers a danger to the safety of the country.

### **Principles of Policy**

(5) The Constitution of Pakistan also provides for what are known as the principles of policy. It is the responsibility of each organ and authority of the State and each person performing functions on behalf of an organ or authority of the state, to act in accordance with these principles in so far as they relate to the functions of the organ or the authority. In so far as the observance of any particular principle of policy may be dependent upon resources being available for the purpose, the principle shall be regarded as being subject to the availability of resources. The responsibility of deciding whether any action of an organ or authority of the State, or of a person performing functions on behalf of an organ or authority of the State, is in accordance with the principles of policy is that of the organ or authority of the State or of the person concerned. The validity of an action or of a law shall not be called in question on the ground that it is not in accordance with the principles of policy and no action shall lie against the State, any organ or authority of the State or any person on such a ground.

One of the principles of policy is that the Muslims of Pakistan should be enabled, individually and collectively, to order



their lives in accordance with the fundamental principles and basic concepts of Islam and should be provided with facilities whereby they may be able to understand the meaning of life in accordance with those principles and concepts. The teachings of the Holy Quran and Islamiyat to the Muslims of Pakistan should be compulsory. Unity and the observance of Islamic moral standards should be promoted amongst the Muslims of Pakistan. The proper organization of zakat, wakfs and mosques should be ensured.

Parochial, racial, tribal, sectarian and provincial prejudices amongst the citizens should be discouraged. The legitimate rights and interests of the minorities should be safeguarded and the members of minorities should be given due opportunity to enter the service of Pakistan. Special care should be taken to promote the educational and economic interests of people of backward classes or in backward areas. Steps should be taken to bring on terms of equality with other persons the members of under-privileged castes, races, tribes, and groups, and to this end, the under-privileged castes, tribes and groups, within a province should be identified by the government of the province and entered in a schedule of under-privileged classes.

The people of different areas and classes, through education, training, industrial development and other methods, should be enabled to participate fully in all forms of national activities, including employment in the service of Pakistan. Illiteracy should be eliminated and free and compulsory primary education should be provided for all, as soon as practicable. Just and humane conditions of work should be provided and children and women should not be employed in vocations unsuited to their age and sex, and maternity benefits should be provided for women in employment.

The well-being of the people, irrespective of caste, creed or race, should be secured by raising the standard of living of the common man, by preventing the undue concentration of wealth and means of production and distribution in the hands of a few, to the detriment of the interest of the common man and by ensuring an equitable adjustment of rights between employers and employees and between landlords and tenants.

All citizens should have the opportunity to work and earn an adequate livelihood and also to enjoy reasonable rest and leisure. All persons in the service of Pakistan or otherwise employed should be provided with social security and means of compulsory social insurance or otherwise. The basic necessities of life such as food, clothing, housing, education and medical treatment should be provided for citizens who, irrespective of caste, creed or race, are permanently or temporarily unable to earn their livelihood on account of infirmity, disability, sickness, or unemployment.

Administrative offices and other services should, so far as practicable, be provided in places where they will best meet the



convenience and requirements of the public. No citizen should be denied entry into the service of Pakistan on the grounds of race, religion, caste, sex or place of residence or birth. This principle may be departed from where, in the public interest, it is desirable that a person who is to perform functions in relation to a particular area should be a resident of that area and a person who is to perform functions of a particular kind should be of a particular sex. The principle is also to be departed from if it is necessary to do so for the purpose of ensuring that, in relation to Central Government, persons from all parts of Pakistan, and in relation to a provincial government, persons from all parts of the province concerned, have an opportunity of entering the service of Pakistan. Disparity in the remuneration of persons in the various classes of the service of Pakistan should, within reasonable and practicable limits, be reduced.

Parity between the provinces in all spheres of the Central Government should, as nearly as practicable, be achieved. Persons from all parts of Pakistan should be enabled to serve in the Defence Services of Pakistan. *Riba* (usury) should be eliminated. Prostitution, gambling, and the taking of injurious drugs should be discouraged. The consumption of alcohol liquor (except for medicinal purposes and in the case of non-Muslims for religious purposes) should be discouraged. The bonds of unity amongst Muslim countries should be preserved and strengthened, international peace and security should be promoted, goodwill and friendly relations amongst all nations should be fostered. The settlement of international disputes by peaceful means should be encouraged.

(6) The new Constitution of Pakistan provides for a unicameral legislature at the Centre known as the National Assembly. This has been done although the Constitution Commission had recommended the establishment of two Houses of the legislature known as the Senate and the House of the People. Provision has also been made for unicameral legislatures in the provinces.

(7) Part XI of the Constitution deals with the method of amendment of the Constitution. According to it, the Constitution can be amended by an Act of the Central Legislature. A bill to amend this Constitution shall not be presented to the President for assent unless it has been passed by the votes of not less than two-thirds of the total number of the members of the National Assembly. The President shall, within 30 days after a bill to amend this Constitution is presented to him, assent to the bill, declare that he withholds assent from the bill, or return the bill to the National Assembly with a message requesting that the bill or a particular provision of the bill, be reconsidered and that any amendments specified in the message be considered. If the President fails to do any of these things within the period of 30 days, he shall deem to have assented to the bill at the expiration of that period.

If the President declares that he withholds assent from the Bill, the National Assembly shall be competent to reconsider the



Bill and, if the Bill is again passed by the Assembly, with or without amendment, by the votes of not less than three-quarters of the total number of members of the Assembly, the Bill shall again be presented to the President for assent. If the President returns the Bill to the National Assembly, the Assembly shall reconsider the Bill and if the Bill is again passed by the Assembly, without amendment or with the amendments specified by the President in his message or with amendments which the President has subsequently informed the Speaker of the Assembly are acceptable to him, by the votes of not less than two-thirds of the total number of members of the Assembly, or the Bill is again passed by the Assembly by the votes of not less than three-quarters of the total number of members of the Assembly, the Bill shall again be presented to the President for assent. When the Bill is again presented to the President for assent the President shall, within ten days after the Bill is presented to him, assent to the Bill or cause to be referred to a referendum the question whether the Bill should or should not be assented to. However, if within the period of ten days, the President fails to do either of these things, and the Assembly is not dissolved, the President shall be deemed to have assented to the Bill at the expiration of that period. If at a referendum conducted in relation to a Bill, the votes of the majority of the total number of Members of the Electoral College are cast in favour of the Bill being assented to, the President shall be deemed to have assented to the Bill on the day on which the result of the referendum is declared.

Article 210 provides that a Bill to amend the Constitution which would have the effect of altering the limits of a province shall not be passed by the National Assembly unless it has been approved by a resolution of the Assembly of the province passed by the votes of not less than two-thirds of the total number of members of that Assembly.

(8) Part X of the Constitution deals with Islamic Institutions. There is a mandatory provision for the establishment of an *Advisory Council of Islamic Ideology*. The Council shall consist of such number of members being not less than five and not more than 12, as the President may determine. The members of the Council shall be appointed by the President on such terms and conditions as the President may determine. The President shall, in selecting a person for appointment to the Council, have regard to the person's understanding and appreciation of Islam and of the economic, political, legal and administrative problems of Pakistan.

A member of the Council shall hold office for a period of three years from the date of his appointment. However, if a resolution recommending his removal is passed by a majority of the total number of members of the Council, the President may remove him from office, but he shall not otherwise be removed from office. A member of the Council may resign his office by writing under his hand addressed to the President. The Presi-



dent shall appoint one of the members of the Council to be its Chairman.

The functions of the Council shall be to make recommendations to the Central Government and the Provincial Governments as to the means of enabling and encouraging the Muslims of Pakistan to order their lives in all respects in accordance with the principles and concepts of Islam, and to advise the National Assembly, a Provincial Assembly, the President or a Governor on any question referred to the Council under Article 6. That question relates to the fact whether a proposed law disregards or violates or is otherwise not in accordance with the principles of law-making. When such a question is referred to the Advisory Council of Islamic Ideology for advice, the latter shall within 7 days therefrom inform the Assembly, the President or the Governor, as the case may be, of the period within which the Council expects to be able to furnish advice. Where the Assembly, the President or the Governor, as the case may be, considers that in the public interest, the making of the proposed law in relation to which the question arises should not be postponed until the advice is furnished, the law may be made before the advice is furnished.

The proceedings of the Council shall be regulated by the rules of procedure to be made by the Council with the approval of the President of Pakistan.

Article 207 provides that there shall be an organisation to be known as **Islamic Research Institute** which shall be established by the President. The function of the Institute shall be to undertake Islamic Research and instruction in Islam for the purpose of assisting in the reconstruction of Islamic society on a truly Islamic basis.

(9) Article 215 provides that the national languages of Pakistan are Bengali and Urdu. However, this Article shall not be construed as preventing the use of any other language. Particularly, the English language can be used for official and other purposes until arrangements for its replacement are made. In the year 1972, the President shall constitute a Commission to examine and report on the question of the replacement of the English language for official purposes.

(10) Article 211 provides that the capital of the Republic of Pakistan shall be Islamabad, situated in the district of Rawalpindi in the province of West Pakistan at the site selected for the capital of Pakistan before the enactment of the Constitution. The area of the capital shall be determined by the Central Legislature, but shall not be less than 200 square miles. There shall be a second capital of the Republic at Dacca in the province of East Pakistan. The principle site of the National Assembly shall be at Dacca and that of the Central Government at Islamabad. Until provision is made for establishment of the Central Government at Islamabad, the principal seat of that government shall be at **Rawalpindi**.



(11) Part IX of the Constitution provides for the Comptroller and Auditor-General of Pakistan to be appointed by the President. His terms and conditions of service shall be determined by an Act of the Central Legislature. Before he enters upon his office, he shall make before the Chief Justice of the Supreme Court an oath in the prescribed form. He shall hold office until he attains the age of 60 years. He shall be liable to be removed from office in the manner provided for the removal of the Judges of the Supreme Court or High Court. He, however, may resign his office voluntarily by writing to the President.

He shall not hold any other office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services. A person who has held office as Comptroller and Auditor-General shall not hold any office of profit in the service of Pakistan before the expiration of two years after he ceased to hold that office.

At any time when the office of Comptroller and Auditor-General is vacant, or he is absent or is unable to perform the functions of his office due to illness or some other cause, such other person as the President may direct shall act as Comptroller and Auditor-General and perform the functions of that office.

The Comptroller and Auditor-General shall perform such functions and exercise such powers and prepare such reports in relation to the expenditure and accounts of the Centre and of the provinces as may be provided or required by Act of the Central Legislature. The accounts of the Centre and of the provinces shall be kept in such form as the Comptroller and Auditor-General, with the approval of the President, may determine.

The reports of the Comptroller and Auditor-General relating to the accounts of the Centre shall be submitted to the President who shall cause them to be laid before the National Assembly. His reports relating to the accounts of a province shall be submitted to the Governor of a province, who shall cause him to be laid before the Assembly of a province.

### **PRESIDENT OF PAKISTAN**

The Constitution provides for a President of Pakistan. No person can be elected as President of Pakistan unless he is a Muslim, has attained the age of 35 years and is also qualified to be elected as a member of the National Assembly.

#### **Election**

The President is to be elected by the Electoral College of Pakistan. Each province in Pakistan is divided into not less than 40,000 territorial units known as electoral units. The number of electoral units in each province has to be the same. An Electoral Roll has to be established and maintained for each electoral unit. Any citizen who is not less than 21 years of age, is not of unsound mind and is a resident or is deemed by law to be a resident of an electoral unit, is entitled to be enrolled on the electoral roll for



that electoral unit. The persons enrolled on the electoral roll for an electoral unit are required to elect from time to time from amongst themselves a person who is not less than 25 years of age and he is known as elector for that unit. The electors for all territorial units in both provinces together constitute the Electoral College of Pakistan and the electors are known as the members of the Electoral College. It is the members of this Electoral College of Pakistan who elect the President of Pakistan.

The Constitution provides that an election for the President of Pakistan shall be held within the period of 120 days immediately preceding the day on which the term of office of a President is due to expire and the results of the election shall be declared not less than 14 days before that date, but the person elected shall not enter upon the office of the President before that office is vacant. When a President dissolves the National Assembly, an election for the office of the President shall be held within the period of 120 days after the dissolution, but polling at the election shall not take place until 60 days have elapsed from the date of the dissolution. When a President ceases to hold office before the expiration of his term of office, an election for the office of President shall be held within the period of 90 days after he ceases to hold office. When a person, having been elected as President, fails to enter upon his office, an election to elect another person in his place shall be held as soon as is practicable.

The term of office of President is the period commencing on the day on which he enters upon his office and ending five-years after his predecessor ceased to hold office. Where his predecessor as President ceased to hold office before completing his term of office, his term of office is to end on the day on which his predecessor's term of office was due to expire and if the unexpired portion of his predecessor's term of office was less than 180 days, five years after his predecessor's term of office was due to expire. Where his predecessor as President ceases to hold office following a dissolution of the National Assembly, the term of office is to end after five years and 60 days after the commencement of the term of National Assembly elected in place of the Assembly that was dissolved. The President can also resign his office by writing to the Speaker of the National Assembly.

The person who is and has for a continuous period of more than 8 years, been holding office as President, is not eligible to be re-elected as President. If such a person is a candidate for election to the office of President, the Chief Election Commissioner shall inform the Speaker of the National Assembly of the candidature and the Speaker shall forthwith convene a joint sitting of the members of the National Assembly and of the Provincial Assemblies to consider the candidature. If the majority of the members present at the joint sitting, by secret ballot, approve of the candidature, the President shall be eligible for re-election.

If the number of candidates for election to the office of President exceeds three, the Chief Election Commissioner shall inform



the Speaker of the National Assembly of the fact and the Speaker shall forthwith convene a joint sitting of the members of the National Assembly and of the Provincial Assemblies to select three of the candidates for election. The members present at the joint sitting shall, by secret ballot, select three of the candidates for election and any candidate not selected shall not be eligible for election. A candidate may address the members present at the joint sitting and may be questioned by any of those members. Where the person holding office as President is a candidate for election, his candidature shall not be disregarded for purposes of Article 167. Article 167 also does not apply if a Provincial Assembly stands dissolved.

### Removal

Provision has been made in the Constitution for the removal of the President on grounds of incapacity. It is provided that not less than one-third of the total number of the members of the National Assembly may give a written notice signed by each of them to the Speaker of the Assembly for the removal of the President from office on the ground of his physical or mental incapacity. The notice shall set out the particulars of the alleged incapacity. The Speaker shall forthwith cause a copy of the notice to be transmitted to the President, together with a request by the Speaker that the President submit himself to an examination by a Medical Board. The resolution shall not be moved in the Assembly earlier than 14 days or later than 30 days after notice of the resolution was given to the Speaker. If it is necessary to summon the National Assembly in order to enable the resolution to be moved within that period or to be considered by the National Assembly, the Speaker shall summon the National Assembly. The President shall have the right to appear and be represented before the National Assembly during the consideration of the resolution by the Assembly. If the President has not submitted himself to an examination by the Medical Board before the resolution is moved in the National Assembly, the resolution may be voted upon and, if it is passed by the Assembly by votes not less than three-quarters of the total number of members of the Assembly, the President shall forthwith cease to hold office. If before the resolution is moved in the National Assembly, the President has submitted himself to an examination by the Medical Board, the resolution shall not be voted upon until the Medical Board has been given an opportunity of putting its opinion before the Assembly. If after consideration by the National Assembly of the resolution and the opinion put before the National Assembly by the Medical Board, the resolution is passed by the Assembly by votes not less than three-quarters of the total number of members of the Assembly, the President shall forthwith cease to hold office. If, where the President has submitted himself to an examination by the Medical Board, less than one-half of the total number of members of the National Assembly vote in support of the resolution, the members who gave notice of the resolution to the Speaker of



the Assembly shall cease to be members of the Assembly forthwith after the result of the voting on the resolution is declared.

### **Impeachment**

Provision has also been made in the Constitution for the impeachment of the President before the National Assembly. It is provided that not less than one-third of the total number of members of the National Assembly may give a written notice signed by each of them to the Speaker of the Assembly when they intend to move a resolution in the Assembly for the removal of the President from office on a charge that he has wilfully violated the Constitution or has been guilty of gross misconduct. The notice shall set out particulars of the charge. The Speaker shall forthwith cause a copy of the notice to be transmitted to the President. The resolution shall not be moved in the National Assembly earlier than 14 days or later than 30 days after notice of the resolution was given to the Speaker. If it is necessary to summon the National Assembly in order to enable the resolution to be moved within that period, or to be considered by the Assembly, the Speaker shall summon the National Assembly. The President shall have the right to appear and be represented before the National Assembly during the consideration of the resolution by the Assembly. If after consideration by the National Assembly of the resolution, it is passed by the Assembly by votes of not less than three-quarters of the total number of members of the Assembly, the President shall forthwith cease to hold office and shall be disqualified from holding public office for a period of 10 years from the passing of the resolution. If less than one-half of the total number of members of the National Assembly vote in favour of the resolution, the members who gave notice of the resolution to the Speaker of the Assembly shall cease to be members of the Assembly forthwith after the result of the voting on the resolution is declared.

### **Powers**

The executive authority of the Republic of Pakistan is vested in the President of Pakistan, and shall be exercised by him either directly or through officers subordinate to him, in accordance with the Constitution and the law. The President may specify the manner in which orders and other instruments made and executed in pursuance of any authority or power vested in the President shall be expressed and authenticated. The President may regulate the allocation and transaction of the business of the Central Government and establish divisions of the Government.

To assist him in the performance of his functions, the President may, from amongst persons qualified to be elected as members of the National Assembly, appoint persons to be members of a Council of Ministers, to be known as the President's Coun-



**cil of Ministers.** Before he enters upon his office, a minister appointed by the President shall make before the President an oath in a prescribed form. The President may, from amongst members of the National Assembly, appoint persons (not exceeding in number the number of divisions of the Central Government established by the President) to be Parliamentary Secretaries and persons so appointed shall perform such functions in relation to those divisions as the President may direct.

The President shall appoint a person who is qualified to be appointed as a judge of the Supreme Court of Pakistan, to be Attorney-General for Pakistan. The latter shall perform such duties as the President may direct. In the performance of his duties, the Attorney-General shall have the right of audience in all courts in Pakistan.

The Supreme Command of the Defence Services of Pakistan is vested in the President to be exercised by him subject to law. Without limiting the generality of this power, the President has power, subject to law, to raise and maintain the Defence Services of Pakistan and the Reserves of those Services. He can also grant commissions in those Services. He can also appoint chief commanders of those services, and also determine their salaries and allowances.

The President has power to grant pardons, reprieves and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

Certain legislative powers have also been given to the President. When a Bill has been passed by the National Assembly, it has to be presented to the President for his assent. The President shall, within 30 days after a Bill is presented to him, assent to the Bill, or declare that he withholds his assent from the Bill or return the Bill to the National Assembly with a message requesting that the Bill or a particular provision of the Bill, be reconsidered and that any amendments specified in the message be considered. If the President fails to do any of those things within the period of 30 days, he shall be deemed to have assented to the Bill at the expiration of that period. The President has the authority to dissolve the National Assembly at any time. If at any time, a conflict with respect to any matter arises between the President and the National Assembly and the President considers that it is desirable that the matter should be referred to a referen-

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1. There is a similar provision in the French Constitution. Article 23 provides that members of Government may not belong to Parliament. The underlying assumption formulated by Prof. Duverger is that as long as the Deputies can hope that by overthrowing a Cabinet they can become Ministers themselves, they will overthrow Cabinets. There is less possibility of their doing so, if in order to become Ministers, they must give up their seats as Deputies. As a result of the public pressure put on him, the President of Pakistan issued on 14-6-62 an order enabling the members of the National and Provincial Assemblies to be appointed members of the Council of Ministers of the President or the Governor without loss of their seats in the Assembly.



dum, the President may cause the matter to be referred to a referendum in the form of a question that is capable of being answered either by a 'Yes' or 'No'. A referendum under this Article shall be conducted amongst the members of the Electoral College.

The President may address the National Assembly and send messages to the Assembly. A member of the President's Council of Ministers and the Attorney-General shall have the right to speak in and otherwise take part in the proceedings of the National Assembly or any of its committees. However, he shall not be entitled to vote. No bill or amendment of a bill providing for or relating to preventive detention shall be introduced or moved in the National Assembly without the previous consent of the President.

Certain legislative powers have been given to the President to be exercised by him at a time when the National Assembly is not in session. It is provided that if at any time the National Assembly is not in session or stands dissolved and the President is satisfied that circumstances exist which render immediate legislation necessary, he may make and promulgate such ordinances as circumstances appear to him to require. Any such ordinance shall have the same power of law as an Act of the Central Legislature. The ordinance thus made and promulgated shall, as soon as it is practicable, be laid before the National Assembly. If before the expiration of the prescribed period, the National Assembly, by resolution, approves of the ordinance, the ordinance shall be deemed to have become an Act of the Central Legislature. However, if before the expiration of that period, the National Assembly, by resolution, disapproves of the ordinance, it shall cease to have effect and shall be deemed to have been repealed upon the passing of the resolution. If the National Assembly has not approved or has not disapproved of the ordinance, and it has not been repealed by the President before the expiration of the expired period, it shall cease to have effect and shall be deemed to have been repealed upon the expiration of that period. The power of the President to make laws by making and promulgation of ordinances extends only to the making of laws within the legislative competence of the Central Legislature. The prescribed period in relation to an ordinance means the period ending 42 days after the first meeting of the National Assembly following the promulgation of the ordinance or the period ending 180 days after the promulgation of the ordinance, whichever is shorter.

Certain legislative powers have been given to the President to be exercised by him at the time of an emergency. The Constitution provides that if the President is satisfied that a grave emergency exists in which Pakistan or any part of Pakistan is threatened by war, or external aggression, or in which the security or economic life of Pakistan is threatened by internal disturbances beyond the power of a Provincial Government to control, the President may issue a proclamation of emergency. Such a proclamation has to be placed before the National Assembly as soon as it is



practicable. The President shall, when he is satisfied that the ground on which he issued the proclamation of emergency has ceased to exist, revoke the proclamation. If at a time when a proclamation of emergency is enforced, the President is satisfied that immediate legislation is necessary to assist in meeting the emergency that gave rise to the issue of the proclamation, he may make and promulgate such ordinances as appear to him to be necessary to meet the emergency and any such ordinance shall have the same powers of law as an Act of the Central Legislature. The ordinance thus made and promulgated shall, as soon as it is practicable, be laid before the National Assembly. The National Assembly shall have no power to disapprove of the ordinance, but if before the ordinance ceases to have effect, the National Assembly, by resolution, approves of the ordinance, the ordinance shall be deemed to have become an Act of the Central Legislature. An ordinance made under the Article shall, unless it has been sooner approved by the National Assembly or repealed by the President, cease to have effect, and shall be deemed to have been repealed, at the time when the Proclamation of Emergency by virtue of which it was made, is revoked. The power of the President to make laws by the making and promulgation of ordinance extends only to the making of laws within the legislative competence of the Central Legislature.

Article 116 provides that no criminal proceedings whatsoever shall be instituted or conducted against the President while he is in office. No civil proceedings in which relief is claimed against the President shall be instituted while he is in office and in respect of anything done or not done or purporting to have been done or not done, by him in his personal capacity, whether before or after he entered upon his office, unless at least 60 days before the proceedings are instituted, notice in writing has been delivered to him or sent to him in the manner prescribed by law, stating the nature of the proceedings, the cause of action, name, description and place of residence of the party by whom the proceedings are to be instituted and the relief which he claims. No process whatsoever shall issue from any court or tribunal against the President whether in a personal capacity or otherwise while he is in office.

Article 117 provides that neither the President nor a Minister shall, except in respect of anything done or not done by him in contravention of the law, be answerable to any court or tribunal for the exercise of the powers, or the performance of the duties of his office, or for any act done or purporting to be done by him in the exercise of those powers or in the performance of those duties. This Article shall not be construed as restricting the right of any person to bring appropriate proceedings against the Central Government or a Provincial Government.

Article 118 provides that a Governor, a Minister or a Parliamentary Secretary appointed by a President, and the Attorney-General shall hold office during the pleasure of the President and



may be removed from office at any time by the President without any reason being assigned for his removal. Article 119 provides that a Governor shall not remove a Minister from office without the concurrence of the President.

Article 121 provides that if in the opinion of the President, a Governor or a Minister appointed by the President has been guilty of such gross misconduct in relation to his duties that he should be disqualified from holding public office, the President may, in addition to removing him from office, inform him, in writing, that he has the option of agreeing to disqualification from holding public office for such period, not exceeding five years, as is fixed by the President, or of having the matter referred to a Tribunal for enquiry. If within seven days after he is so informed, the Governor or Minister, by writing address to the President, agreed to the disqualification, he shall be disqualified from holding public office for the period fixed by the President. If the Governor or Minister does not agree to the disqualification, the President shall forthwith refer the matter for enquiry to a Tribunal consisting of a Judge of the Supreme Court appointed by the President after consultation with the Chief Justice of the Supreme Court. The Tribunal shall enquire into the matter in such a manner as is prescribed by law. If the Tribunal finds that the Governor or Minister has been guilty of gross misconduct in relation to his duties, his removal from office as Governor or Minister shall be regarded as dismissal from office, and he shall be disqualified from holding public office for a period of five years from the date on which the President took action in relation to him under this Article.

Article 214 provides that the remuneration and privileges of the President shall be the same as the remuneration and privileges to which, immediately before the commencing day, the President of Pakistan was entitled.

### **The Central Legislature**

The Constitution of Pakistan provides for a unicameral central legislature known as the National Assembly of Pakistan. It has 156 members, half of which are elected from East Pakistan and the other half from West Pakistan. Three seats from each province are reserved exclusively for women. Unless it is sooner dissolved, the National Assembly can continue for a term of five years from the declaration of the result of its members or the expiration of the term of the previous National Assembly, whichever last occurs. On the expiration of the term of a National Assembly, it automatically stands dissolved.

The President may, from time to time, summon the National Assembly and also prorogue the same. The Speaker of the National Assembly may, at the request of not less than one-third of the total number of members of the Assembly, summon the Assembly and, when the Speaker has summoned it, he may prorogue it. In the event of each of the offices of the President and the Speaker and Deputy Speaker of the National Assembly being



vacant, the Chief Justice of the Supreme Court may summon the National Assembly. When the National Assembly is summoned, the date, time and place of meeting shall be specified.

The President may, at any time, dissolve the National Assembly. However, he shall not dissolve the National Assembly at any time when the unexpired portion of the National Assembly is less than 120 days. If notice of a resolution is given to the Speaker of the National Assembly, the President shall not dissolve the National Assembly before the resolution has been voted upon by the Assembly or before the expiration of 30 days after the expiry of the period within which it may be moved, whichever first occurs. When the President dissolves the National Assembly, he shall cease to hold office upon the President elected as his successor entering upon his office or upon the expiration of 120 days after the date of the dissolution.

If at any time a conflict with respect to any matter arises between the President and the National Assembly, and the President considers that it is desirable that the matter should be referred to a referendum, the President may cause the matter to be referred to a referendum by the members of the Electoral College of Pakistan.

The President may address the National Assembly and also send messages to it. A member of the President's Council of Ministers and the Attorney General of Pakistan shall have the right to speak in and otherwise take part in the proceedings of the National Assembly or any of its committees, but shall not be entitled to vote. No Bill or amendment of a Bill, providing for or relating to preventive detention, shall be introduced or moved in the National Assembly without the previous consent of the President.

When a Bill has been passed by the National Assembly, it shall be presented to the President for assent. Within 30 days after a Bill is presented to him, the President shall assent to the Bill, declare that he withholds assent from the Bill or return the Bill to the National Assembly with a message requesting that the Bill or a particular provision of the Bill be reconsidered, and that any amendments specified in the message be considered. If the President fails to do any of those things within the period of 30 days, he shall be deemed to have assented to the Bill at the expiration of that period. If the President declares that he withholds assent from the Bill, the National Assembly shall be competent to reconsider the Bill. If the Bill is again passed by the National Assembly with or without amendment by a two-thirds majority of its total membership, the Bill shall again be presented to the President for assent. If the President returns a Bill to the National Assembly, the latter shall consider the Bill and if the Bill is again passed by the National Assembly, without amendment or with the amendments specified by the President in his message, or with amendments which the President has subsequently informed the Speaker of the Assembly are acceptable to him, by the votes of a majority of the total number of members of the



Assembly, the Bill shall again be presented to the President for assent. The Bill is also presented to the President for his assent if it is passed by the Assembly by the votes of not less than two-thirds of the total members of the Assembly. When a Bill is thus presented to the President for his assent, he shall, within 10 days of the presentation of the Bill to him, assent to the Bill or cause the same to be referred to a referendum by the Electoral College of Pakistan. If within the period of 10 days, the President fails to do either of those things and the Assembly is not dissolved, the President shall be deemed to have assented to the Bill at the expiration of that period. If at the referendum, the votes of the majority of the total number of members of the Electoral College are cast in favour of the Bill being assented to, the President shall be deemed to have assented to the Bill on the day on which the result of the referendum is declared. When the President has assented to or is deemed to have assented to a Bill passed by the National Assembly, it shall be called an Act of the Central Legislature.

The President has also been given legislative powers when the National Assembly is not in session. This is done when the President is satisfied that circumstances exist which render immediate legislation necessary. In that case, the President can make and promulgate such ordinances as the circumstances may appear to him to require. Such an ordinance has the force of law as an Act of the Central Legislature. Such an ordinance has to be placed before the National Assembly as soon as it is practicable. If the National Assembly approves of the ordinance, it becomes an Act of the Central Legislature. However, if the National Assembly disapproves of the ordinance, it ceases to have effect. If the ordinance is neither approved nor disapproved by the National Assembly, it ceases to have effect upon the expiration of the period for which the ordinance is passed. The period for which an ordinance lasts is the period ending 42 days after the first meeting of the National Assembly following the promulgation of the ordinance or the period ending 180 days after the promulgation of the ordinance, whichever is shorter.

The President of Pakistan has also legislative powers to be exercised in times of emergency. Article 30 authorises the President to issue a Proclamation of Emergency if he is satisfied that Pakistan or any part of Pakistan is threatened by war or external aggression or the security and economic life of Pakistan is threatened by internal disturbances beyond the power of a Provincial Government to control. The Proclamation of Emergency has to be placed before the National Assembly as soon as it is practicable. If at a time when a Proclamation of Emergency is in force, the President is satisfied that immediate legislation is necessary to assist in meeting the emergency, he may make and promulgate such ordinances as appear to him to be necessary to meet the emergency, and any such ordinance shall have the same force of law as an Act of the Central Legislature. Such an ordinance has to be placed before the National Assembly as soon as it is prac-



ticable. The National Assembly shall have no power to disapprove of the ordinance. However, if before the ordinance ceases to have effect the National Assembly approves of the ordinance, the ordinance shall be deemed to have become an Act of the Central Legislature. An ordinance made under this Article shall, unless it has been sooner approved by the National Assembly or repealed by the President, cease to have effect and shall be deemed to have been repealed at the time when the Proclamation of Emergency by virtue of which it was made, is revoked. The President can make ordinances only regarding those matters which are within the legislative competence of the Central Legislature.

Article 40 provides that the President shall, in respect of every financial year, cause to be laid before the National Assembly the Annual Budget Statement of the estimated receipts into and the estimated expenditure from, the Central Consolidated Fund for that year. The Annual Budget Statement shall distinguish expenditure on revenue account from other expenditure. It shall show separately the sums required to meet expenditure charged upon the Central Consolidated Fund and the sums required to meet other expenditure, distinguishing recurring expenditure from expenditure that is not recurring expenditure and showing the extent to which that other expenditure is new expenditure. The Annual Budget Statement shall also dictate the sources from which the estimated receipts will be derived.

So much of an Annual Budget Statement as relates to expenditure charged upon the Central Consolidated Fund may be discussed in the National Assembly but it shall not be voted upon. The expenditure other than that charged upon the Central Consolidated Fund, shall be submitted to the National Assembly in the form of demands for grants. A demand for a grant in respect of a sum that is not shown in an Annual Budget Statement as new expenditure may be discussed in the National Assembly but the demand shall not be submitted to the vote of the Assembly and the Assembly shall be deemed to have assented to the demand at the expiration of 14 days after the statement was laid before the Assembly or at the commencement of the financial year to which the statement relates. The National Assembly may, with the consent of the President, reduce a demand for a grant, and in that event, the Assembly shall be deemed to have assented to the demand as so reduced. The National Assembly may assent to or refuse a demand for a grant in respect of a sum that is shown in the Annual Budget Statement as new expenditure, or may assent to the demand in respect of such lesser sum as the Assembly may specify. A demand for a grant shall not be made except on the recommendation of the President.

The Annual Budget Statement or a Supplementary Budget Statement in respect of a financial year may specify the estimated expenditure for projects extending over several years. The National Assembly may approve or disapprove of the expenditure for any such subsequent year or may approve of such lesser expenditure for that year as is specified in the resolution.



Following consideration by the National Assembly of the Annual Budget Statement in respect of a year, the President shall cause to be prepared a schedule known as the Schedule of Authorised Expenditure, and shall authenticate the Schedule by his signature. No moneys shall be withdrawn from the Central Consolidated Fund except under the authority of the Schedule of Authorised Expenditure as authenticated by the President. The Schedule of Authorised Expenditure shall be laid before the National Assembly for its information.

Article 44 provides for Supplementary and Excess Budget Statements. Article 45 provides for unexpected expenditure. Article 46 relates to expenditure from Central Consolidated Fund pending authentication of Schedule of Authorised Expenditure by the President.

Article 47 provides that except on the recommendation of the President, no Bill or amendment shall be introduced or moved in the National Assembly if it would, if enacted and brought into operation, involve expenditure from the revenues or other moneys of the Central Government. The same is the case if the Bill makes provision for any of the matters or any matter incidental to any of the following matters:—

- (1) The imposition, abolition, remission, alteration or regulation of any tax.
- (2) The borrowing of money or the giving of any guarantee by the Central Government or the amendment of the law relating to the financial obligations of the Central Government.
- (3) The imposition of a charge upon the Central Consolidated Fund or the abolition or alteration of any such charge.
- (4) The custody of the Central Consolidated Fund, the payment of money into or the issue of moneys from that Fund.
- (5) The custody, receipt or issue of any other moneys of the Central Government.
- (6) The audit of the accounts of the Central Government or of a Provincial Government.

Article 48 provides that no tax shall be levied for purposes of the Central Government except by or under the authority of an Act of the Central Legislature.

It is to be observed that the National Assembly is not an impotent institution. As it is elected by the same Electoral College which elects the President, it can afford to assert itself even against the President on the ground that it has as much mandate from the people as the President himself has. The National Assembly can make lives of the Ministers and Parliamentary Secretaries a hell by criticising their policies and by refusing to pass legislation which may be considered necessary by the executive. It may also become difficult for the Government to defend its policies in the



National Assembly. The members of the National Assembly are free to move adjournment motions against the Ministers. They can also pass votes of no-confidence against them. All this will put the Government on the defensive and that is not a desirable thing at all. It is true that the President can threaten the members of the National Assembly that he would dissolve the Assembly itself but in such a case, he himself has to take the consequences which may not be palatable to him. If there is a conflict between the President and the National Assembly, the same can be referred to a Referendum but that in itself does not weaken the position of the National Assembly. The National Assembly has also been given the power to impeach the President and also remove him from office. All these factors taken together make the position of the National Assembly sufficiently strong.

### THE JUDICIARY IN PAKISTAN

The Constitution provides for a Supreme Court of Pakistan. It is to consist of a Chief Justice and as many other judges as may be determined by law, or until so determined, as may be fixed by the President. The Chief Justice of the Supreme Court shall be appointed by the President and the other judges shall be appointed by the President after consultation with the Chief Justice. A person shall not be appointed as a judge of the Supreme Court unless he is a citizen of Pakistan and he has for a period of not less than five years been a judge of a High Court in Pakistan, or has for a period of not less than 15 years been an advocate or pleader of a High Court in Pakistan.

Before he enters upon his office, the Chief Justice of the Supreme Court shall make before the President, and any other judge of the Supreme Court shall make before the Chief Justice, an oath in the prescribed form. A judge of the Supreme Court shall hold office until he attains the age of 65 years unless he sooner resigns or is removed from office in accordance with the Constitution. At any time when the office of the Chief Justice of the Supreme Court is vacant or the Chief Justice is absent or unable to perform the functions of his office due to illness or some other cause, such other judge of the Supreme Court as the President may appoint, shall act as the Chief Justice.

If at any time the office of a judge of the Supreme Court is vacant or a judge of the Supreme Court is absent or is unable to perform the functions of his office due to illness or some other cause, the President may appoint a judge of a High Court who is qualified for appointment as a judge of the Supreme Court to act temporarily as a judge of the Supreme Court. An appointment of an acting judge shall continue in force until it is revoked by the President.

Provision has also been made for the appointment of *ad hoc* judges. It is provided that if at any time it is not possible for want of a quorum of judges for the Supreme Court to hold or continue any sittings of the Court, or for any other reason it is



necessary to increase temporarily the number of judges of the Supreme Court, the Chief Justice of the Supreme Court may (with the approval of the President and consent of the Chief Justice of the High Court concerned), require a judge of High Court qualified for appointment as a judge of the Supreme Court to attend sittings of the Supreme Court as an *ad hoc judge* for such period as may be necessary, and while so sitting, such *ad hoc judge* shall have the same power and jurisdiction as a judge of the Supreme Court.

### **Seats of Supreme Court**

The permanent seat of the Supreme Court shall be at Islamabad, but it shall sit in Dacca at least twice in every year for such periods as the Chief Justice of the Supreme Court may consider necessary. The Supreme Court may, from time to time, sit in such other places as the Chief Justice of the Supreme Court, with the approval of the President, may appoint. Until provision is made for establishing the Supreme Court at Islamabad, the seat of the Court shall be at such place as the President may appoint.

### **Original Jurisdiction**

As regards the jurisdiction of the Supreme Court, it shall, to the exclusion of every other court, have original jurisdiction in any disputes between one of the Governments and one or both of the other Governments. While exercising this jurisdiction, the Supreme Court shall pronounce declaratory judgments only. The term 'Governments' means the Central Government and the Provincial Governments.

### **Appellate Jurisdiction**

The Supreme Court shall have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of a High Court. An appeal to the Supreme Court from a judgment, decree, order or sentence of a High Court shall lie as of right where the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution, or the High Court has sentenced a person to death or to transportation for life, or the High Court has imposed punishment on a person in pursuance of the power conferred on the Supreme Court by Article 123. Article 123 provides that the Supreme Court shall have power to punish any person who abuses, interferes with or obstructs the process of the court in any way or disobeys any order of the Supreme Court, or scandalises the court or otherwise does anything which tends to bring the court or a judge of the court into hatred, ridicule or contempt; or does anything which tends to prejudice the determination of a matter pending before the court, or does any other thing which, by law, constitutes contempt of the court. It is also provided that an appeal to the Supreme Court from a judgment, decree, order or sentence of a High Court in a case to which Article 58 (2) does



not apply, shall lie only if the Supreme Court grants *leave to appeal*.

### **Advisory Jurisdiction**

The Supreme Court of Pakistan has advisory jurisdiction. It is provided that if at any time the President considers that it is desirable to obtain the opinion of the Supreme Court on any question of law which he considers of public importance, he may refer the question to the Supreme Court for consideration. The Supreme Court shall consider the question so referred and report its opinion on the question to the President.

### **Additional Jurisdiction**

Provision has been made for additional jurisdiction to be given to the Supreme Court. Article 60 provides that in addition to the jurisdiction conferred upon it by the Constitution of Pakistan, the Supreme Court shall have such other jurisdiction as may be conferred on it by law.

### **Processes of Supreme Court**

Article 61 provides that the Supreme Court shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any cause or matter pending before it, including an order for the purpose of securing the attendance of any person or discovery or production of any document. Any such direction, order or decree shall be enforceable throughout Pakistan and shall, where it is to be executed in a province, be executed as if it had been issued by the High Court of that Province. If a question arises as to which High Court shall give effect to a direction, order or decree of the Supreme Court, the decision of the Supreme Court on the question shall be final.

### **Power of Review**

The Supreme Court has also been given the power of review. Article 62 provides that the Supreme Court shall have power, subject to the provisions of any Act of the Central Legislature and of any Rules made by the Supreme Court, to review any judgment pronounced or any order made by it.

Article 63 provides that any decision of the Supreme Court shall, to the extent that it decides a question of law or is based on or enunciates a principle of law, be binding on all other courts in Pakistan. Article 64 provides that all executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court. According to Article 65, the Supreme Court may, with the approval of the President, make rules regulating the practice and procedure of the Supreme Court.

It is to be observed that the Constitution does not make the Supreme Court of Pakistan strong. It does not enjoy the same position with regard to judicial review of legislation as is the case in the United States and India. President Ayub Khan has



himself given many reasons for not allowing the Courts to be the final arbiters in these matters. His view is that such cases are taken to courts only by men who have a lot of money in their pockets. They alone can afford to pay and engage eminent lawyers. Such a provision is of no use to the common man. Moreover, if the laws of Pakistan were to hang in the air like a parachute and never become firm or final merely because they can be challenged in a Court of Law, a new country like Pakistan cannot hope to move forward. Most of the laws in a society like that of Pakistan hit many powerful vested interests and past traditions. If they remain vulnerable to challenge, that is bound to obstruct all progress. Moreover, instead of trusting one Judge or two Judges, or five Judges, it is preferable to trust 156 legislators who are chosen by the people, who are not outsiders and who are anxious to be re-elected. They are answerable to the people. As a matter of fact, it is extremely difficult to get any laws passed by such a body unless those are reasonable and sensible. In spite of this vigorous defence of the system established in Pakistan, it is pointed out that the National Assembly which is to pass laws, has not been made sovereign in its sphere and too much power has been put in the hands of the President himself. The President has been given the power of appointing and dismissing the judges of the Supreme Court. He can manage to appoint only those persons who will be agreeable to him. He can pack the Supreme Court with his own supporters and camp-followers. All that may not be desirable at all.

### High Courts

Articles 91 to 102 of the Constitution deal with the High Courts of Pakistan. There is a provision for a High Court in each province of Pakistan. A High Court shall consist of a Chief Justice and as many other judges as may be determined by law or fixed by the President.

A judge of a High Court shall be appointed by the President after consultation with the Chief Justice of the Supreme Court, the Governor of the Province concerned, and except where the appointment is that of Chief Justice, with the Chief Justice of the High Court. A person shall not be appointed a judge of a High Court unless he is a citizen of Pakistan and he has for a period of not less than 10 years been an advocate or pleader of a High Court or he is or has for a period of not less than 10 years been a member of a civil service and has for a period of not less than three years served as or exercised the functions of a District Judge in Pakistan, or he has for a period of not less than 10 years, held a judicial office in Pakistan.

A judge of a High Court shall hold office until he attains the age of 60 unless he sooner resigns or is removed from office in accordance with the Constitution. Provision has been made for an Acting Chief Justice and Additional Judges.

The permanent seats of the High Court of East Pakistan shall



be at Dacca. However, the High Court may, from time to time, sit in such other places as the Chief Justice of the Court, with the approval of the Governor of a province, may appoint. The permanent seat of the High Court of West Pakistan shall be at Lahore. There shall also be permanent seats of that Court at Karachi and Peshawar. However, the High Court may from time to time sit in such places as the Chief Justice of the Court with the approval of the Governor of a Province may appoint. A judge of the High Court of the province of West Pakistan shall not be transferred from a permanent seat of that court to another permanent seat of that court without the approval of the President first being obtained. A judge of that court who has served for less than five years at a permanent seat of the court shall not, without his consent, be transferred to another permanent seat except where the transfer is necessary in order to ensure that the functions of the court are properly carried out.

Article 98 of the Constitution deals with the jurisdiction of High Courts in Pakistan. It is provided that a High Court shall have such jurisdiction as is conferred on it by the Constitution or by law. A High Court of a Province may, if it is satisfied that no other adequate remedy is provided by law, make an order directing a person performing in the Province functions in connection with the affairs of the Centre, the Province or a local authority to refrain from doing that which he is not permitted by law to do, or to do that which he is not required to do by law, or declaring that any act done or proceedings taken in a province, performing functions in connection with the affairs of the Centre, the Province or a local authority has been done or taken without lawful authority, and is of no legal effect. The High Court may also make an order directing that a person in custody in province be brought before the High Court so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner. The High Court may also require a person in the province holding or purporting to hold a public office to show under what authority of law he claims to hold that office. However, no such order shall be made on an application made by or in relation to a person in the Defence Services of Pakistan in respect of his terms and conditions of service or of any matter arising out of his service or in respect of any action taken in relation to him as a member of the Defence Services of Pakistan. The same applies to applications made by or in relation to any other person in the service of Pakistan in respect of his terms and conditions of service. Where an application is made to a High Court for an order of the nature mentioned above and the High Court has any reason to believe that the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or otherwise being harmful to the public interest, the High Court shall not make an interim order unless the prescribed Law Officer has been given notice of the application and the High Court, after the Law Officer has been given an opportunity of being heard, is



satisfied that the making of the interim order would not have any adverse effect.

The President may transfer a judge of a High Court from one High Court to another High Court. However, no judge shall be so transferred except with the consent and after consultation by the President with the Chief Justice of the Supreme Court and the Chief Justice of both High Courts. When a judge is so transferred, he shall, during the period for which he serves as a judge of the High Court to which he is transferred, be entitled to such compensatory allowance, in addition to his salary, as the President may by order determine.

Article 100 provides that any decision of a High Court shall, to the extent that it decides the question of law or is based upon or enunciates a principle of law, be binding on all other courts that are subordinate to it.

Article 101 provides that a High Court of a province with the approval of the Governor may make rules regulating the practice and procedure of the High Court or of any other court subordinate to it. Article 102 provides that each High Court shall supervise and control all other courts that are subordinate to it.

Article 124 provides that remuneration and other terms and conditions of service of judges of the Supreme Court or of High Courts shall be as provided in the Second Schedule to the Constitution. That Schedule provides that the Chief Justice of the Supreme Court shall be paid a salary of Rs. 5,500 per mensem and other judges shall be paid Rs. 5,100 per mensem. Every judge of the Supreme Court shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may be determined by the President, and until so determined, to the privileges, allowances and rights to which immediately before the commencement of the Constitution, the judges of the Supreme Court of Pakistan were entitled. The Chief Justice of a High Court shall be paid a salary of Rs. 5,000 per mensem and the other judges a salary of Rs. 4,000 per mensem. The judges of the High Court shall be entitled to such privileges and such rights in respect of leave of absence and pension as may be determined by the President, and until so determined, to the privileges, allowances and rights to which immediately before the commencing day, the judges of the High Court of the Province were entitled.

Article 126 provides that a judge of the Supreme Court or a High Court shall not hold any other office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of the services. However, this clause shall not be construed as preventing a judge from holding or managing his private property. A person who has held office as judge of the Supreme Court or a High Court shall not hold any office of profit in the service of Pakistan before the expiration of two years after he ceases to hold that office.



### Supreme Judicial Council of Pakistan

Article 128 provides that there shall be a *Supreme Judicial Council of Pakistan*. This Council shall consist of the Chief Justice of the Supreme Court, the two next most senior judges of the Supreme Court and the Chief Justice of each High Court. If at any time the Council is inquiring into the capacity or conduct of a judge, who is a member of the Council or a member of the Council is absent or is unable to act as a member of the Council, due to illness or some other cause, the judge of the Supreme Court who is next in seniority shall act as a member of the Council in his place. The Council shall issue a code of conduct to be observed by the judges of the Supreme Court and the High Court. If, on information received by the Council or from any other source, the President is of the opinion that a judge of the Supreme Court or of a High Court may be incapable of properly performing the duties of his office by reason of physical or mental incapacity, or may have been guilty of gross misconduct, the President shall direct the Council to inquire into the matter. If after inquiry into the matter, the reports to the President that it is of opinion that the judge is incapable of performing the duties of his office or has been guilty of gross misconduct, and that he should be removed from office, the President may remove the judge from office. A judge of the Supreme Court or of a High Court shall not be removed from office except as provided by this Article.

Article 129 provides that there shall be, in addition to the Supreme Court and High Courts, such other courts as are established by law. A court so established shall have such jurisdiction as is conferred on it by law. Article 130 provides that no court shall have any jurisdiction that is not conferred on it by this Constitution or by under the law.

In August 1965, the Pakistan National Assembly passed the Constitution (Fourth Amendment) Bill to enable the appointment of a judge of the Supreme Court or High Court to any other executive or judicial post in the country and also to provide for Government servants to be retired after 25 years' service or at 55 years of age. Critics point out that the Bill aims at "destroying" the independence of the judiciary by "alluring judges with the glamour of office with power." They also point out that the new Bill is intended to be a "deliberate encroachment on the judiciary which hitherto was more free and to keep under grips officials.... There is regimentation of press and regimentation of political parties. There is regimentation of cultural bodies and now you are attempting regimentation of judiciary and the official machinery."

### RELATIONS BETWEEN THE CENTRE AND PROVINCES

Pakistan has a federal form of government and no wonder Part VI consisting of Articles 131 to 146 of the Constitution deals with the relations between the Centre and the Provinces.



Article 131 provides that the Central Legislature shall have exclusive power to make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan with respect to any matter enumerated in the Third Schedule of the Constitution. It is also provided that where the national interest of Pakistan in relation to the security of Pakistan, including the economic and financial stability of Pakistan, planning or coordination, or the achievement of uniformity in respect of any matter in different parts of Pakistan, so requires, the Central Legislature shall have power to make laws for the whole or any part of Pakistan with respect to any matter not mentioned in the Third Schedule. It is also provided that if it appears to the Assembly of a Province to be desirable that a matter not enumerated in the Third Schedule should be regulated in the province by an Act of the Central Legislature and a resolution to that effect is passed by the Provincial Assembly, the Central Legislature shall have power to make laws having effect in the province with respect to that matter, but any law made in pursuance of that power may be amended or repealed by an Act of the Provincial Legislature. The Central Legislature shall have power (but not exclusive power) to make laws for the Islamabad Capital Territory and the Dacca Capital Territory with respect to any matter not enumerated in the Third Schedule. The Central Legislature also shall have power to make laws for any part of Pakistan not forming part of a Province with respect to any matter.

Article 132 provides that a Provincial Legislature shall have power to make laws for the province with respect to any matter other than a matter enumerated in the Third Schedule. Article 133 provides that the responsibility of deciding whether a legislature has power under the Constitution to make a law is that of the legislature itself. The validity of a law shall not be called in question on the ground that the legislature by which it was made had no power to make the law. When a Provincial Law is inconsistent with a Central Law, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid (Art. 134).

Article 135 provides that the executive authority of the Republic of Pakistan extends to all matters with respect to which the Central Legislature has exclusive power to make laws, laws made by the Central Legislature and administered by the Central Government, and to all matters in relation to a part of Pakistan not forming part of a province.

Article 137 provides that the Central Government shall not, in respect of its property or income, be liable to taxation under any Provincial Law, and a Provincial Government shall not, in relation to its property or income, be liable to taxation under a Central Law or a Provincial Law of the other province. If a trade or business of any kind is carried on by or on behalf of the Government of a province outside that province, that Government may, in respect of any property used in connection with trade or busi-



ness or any income arising from that trade or business, be taxed under a Central Law or under a Provincial Law of the other province. Nothing in this Article shall prevent the imposition of fees for services rendered.

Article 138 provides that the Central Legislature may by law make grants-in-aid of the revenues of a Provincial Government that may be in need of assistance. Article 139 provides that the executive authority of the Central Government extends to borrowing upon the security of the Central Consolidated Fund within such limits, if any, as may be determined by Act of the Central Legislature, and to the giving of guarantees within such limits, if any, as may be so determined.

Article 140 provides that the executive authority of a province extends to borrowing upon the security of the Provincial Consolidated Fund within such limits as may be determined by Act of the Provincial Legislature, and to the giving of guarantees within such limits as may be so determined. A Provincial Government shall not, without the consent of the Central Government, borrow outside Pakistan or raise any loan at a time when there is outstanding any part of a loan made to the province concerned by the Central Government or any other loan raised by the province in respect of which a guarantee has been given by the Central Government. The Central Government may, subject to such conditions as it may think fit to impose, make loans to a Provincial Government and, within such limits as may be fixed by Act of the Central Legislature, give guarantees in respect of loans raised by a Provincial Government, and any sum required for the purpose of making loans to a Provincial Government shall be charged upon Central Consolidated Fund. A consent made under this Article may be granted subject to such conditions as the Central Government may think fit to impose. However, no such consent shall be unreasonably withheld, nor shall the Central Government refuse, if sufficient cause is shown to make a loan to or to give a guarantee in respect of a loan raised by a Provincial Government or seek to impose in respect of any of the matters aforesaid any condition that is unreasonable. If any dispute arises whether a refusal of consent or a refusal to make a loan or to give a guarantee or any condition insisted upon, is or is not justifiable, the dispute shall be referred to the National Assembly for consideration.

Article 141 provides that a Provincial Law may impose taxes not exceeding such limits as may from time to time be fixed by Act of the Central Legislature, on persons engaged in professions, trades, callings or employment, and no such Provincial Law shall be regarded as imposing a tax on income.

Article 142 provides that the legislature of a Province shall not have power to make any law prohibiting or restricting the entry into or the export from, the province of any goods, or to impose a tax which, as between goods manufactured or produced in the Province and similar goods not so manufactured or



produced, discriminates in favour of the former goods, or which in the case of goods manufactured or produced outside the province, discriminates between goods manufactured or produced in any locality in Pakistan and similar goods produced in any other locality in Pakistan. No Provincial Law which imposes any reasonable restriction in the interest of public health, public order or morality or for the purpose of protecting animals or plants from disease or preventing or alleviating any serious shortage in the province of an essential commodity shall, if it was made with the consent of the President, be invalid by reason of this Article.

Article 143 provides that the President may, with the consent of a Provincial Government, entrust either conditionally or unconditionally to that Government, or to any officer or authority of that Government, functions in relation to any matter to which the executive authority of the Republic extends. An Act of the Central Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties, or authorise the conferment of powers and the imposition of duties upon a Provincial Government or officers or authorities of a Provincial Government. Where, by virtue of this Article, functions have been entrusted to, or powers and duties have been conferred or imposed upon, a Provincial Government or officers or authorities of a Provincial Government, there shall be paid by the Central Government to the Provincial Government, such sums as may be agreed in respect of any extra costs incurred by the Provincial Government in connection with the performance of those functions, the exercise of those powers or the discharge of those duties.

### **National Finance Commission**

Article 144 provides for the establishment of a National Finance Commission by the President from time to time. The President shall constitute a National Finance Commission not later than 15 months before the expiration of the period specified by the National Economic Council. The Commission shall consist of the ministers in charge of the portfolios of Finance in the Central and Provincial Governments and such other persons as, after consultation with the Governors of the Provinces, the President may appoint.

The Commission shall make recommendations to the President with respect to the distribution between the Central Government and the Provincial Governments of the proceeds of the following taxes:—

- (1) Taxes on income, including corporation taxes, but not including taxes on income consisting of remuneration paid out of the Central Consolidated Fund.
- (2) Taxes on sales and purchases.
- (3) Export duty on jute and cotton and such other export duties as may be specified by the President.



- (4) Such duties of excise imposed under a Central Law as may be specified by the President.
- (5) Such other taxes as may be specified by the President.

The Commission shall also make recommendations to the President with respect to the making of grants-in-aid by the Central Government to the Provincial Governments, the exercise by the Central Government and the Provincial Governments of the borrowing powers conferred by the Constitution, and any other matter relating to finance referred to the Commission by the President. As soon as it is practicable after receiving the recommendations of the Commission, the President shall, after considering the recommendations, specify by order the share of the Central Government and the Provincial Governments out of the proceeds of the taxes.

The National Finance Commission is also required to submit to the President, not later than six months before the expiration of the plan period during which the Commission is set up, a report on the progress made during that period in advancing the object referred to in Article 145(4) and recommendations as to the manner in which that object should be achieved in the next succeeding plan period. The President shall furnish a copy of the report and the recommendations submitted to him to the National Economic Council which shall take into consideration those recommendations in formulating its plans. Any recommendations of a National Finance Commission furnished to the President shall, together with an explanatory memorandum as to the action taken on them, be laid before the National Assembly, and before each of the Provincial Assemblies.

### **National Economic Council**

Article 145 provides that as soon as it is practicable after the commencing day (8th June, 1962), the President shall constitute a Council known as the National Economic Council. The Council shall consist of such persons as are appointed to the Council by the President and they shall be the members of the Council during the pleasure of the President.

The Council shall, from time to time, and whenever so directed by the President, review the overall economic position of Pakistan, formulate plans with respect to finance, commerce and economic policies and the economic development of Pakistan and inform the Central and Provincial Governments of those plans. The primary object of the Council in formulating the plans shall be to ensure that disparities between the provinces and between different areas within a province, in relation to income per capita, are removed, and that the resources of Pakistan are used and allocated in such manner as to achieve that object in the shortest possible time, and it shall be the duty of each Government to make an utmost endeavour to achieve that object. The plans formulated by the Council in relation to the economic development of Pakistan

shall be formulated with respect to periods specified by the Council. The Council may, from time to time, appoint such committees or bodies of experts as it considers necessary to assist it in the performance of its functions. Nothing in this Article shall affect the exercise of the executive authority of the Central Government or of a Provincial Government. The Council shall submit every year to the National Assembly a report on the results obtained and the progress made in the achievement of the object and a copy of the report shall also be laid before each Provincial Assembly.

Article 146 provides that any property that has no rightful owner, shall, if located in a province, vest in the Government of that province, and in every other case in the Central Government. All lands, minerals and other things of value underlying the ocean within the territorial waters of Pakistan shall vest in the Central Government.

### THE PROVINCIAL GOVERNMENTS

Pakistan is divided into two Provinces of East Pakistan and West Pakistan. There is a Governor for each province. He is appointed by the President and is subject to the directions of the President in the performance of his duties. No person can be appointed a Governor of a Province unless he is qualified to be elected as a member of the National Assembly. Provision has been made for an Acting Governor in case a Governor is absent from Pakistan or is unable to perform his duties as a Governor due to illness or some other cause. The Acting Governor is appointed by the President and he has to act according to the directions of the President while performing his duties.

The executive authority of a province is vested in the Governor and shall be exercised by him, either directly or through officers subordinate to him, in accordance with the constitution, the law and the directions of the President. The Governor of a province may specify the manner in which orders and other instruments made and executed in pursuance of any authority or power vested in the Governor shall be expressed and authenticated. He may regulate the allocation and transaction of the business of the Government of the province and establish departments of that Government.

To assist him in the performance of his functions, the Governor of a Province may, with the concurrence of the President, from amongst persons qualified to be elected as members of the Assembly of the Province, appoint persons to be members of a Council of Ministers, to be known as the Governor's Council of Ministers for the Province. Before he enters upon his office, a minister appointed by a Governor shall make before the Governor an oath in the prescribed form. The Governor of a Province may, from amongst the members of the Assembly of a Province, appoint persons (not exceeding in number the number of departments of the Government of the Province established by the Governor) to



be Parliamentary Secretaries, and persons so appointed shall perform such functions in relation to those departments as the Governor may direct.

The Governor of a Province shall appoint a person who is qualified to be appointed as a Judge of a High Court to be Advocate-General for the Province. The Advocate-General shall perform such duties as the Governor may direct.

### Provincial Legislature

Each Province of Pakistan has a Legislature of one House known as the Assembly of the Province. The Assembly of each Province consists of 155 members. Five seats in each Province are reserved for women. However, women can contest other seats also.

Unless it is sooner dissolved, an Assembly of the Province shall continue for a term of five years from the declaration of the result of the election of its members, or the expiration of term of the previous Assembly, whichever last occurs. On the expiration of the term of an Assembly of the Province, it shall stand dissolved.

The Governor of a Province may from time to time summon the Assembly of the Province and except when it has been summoned by the Speaker, may prorogue it. At the request of not less than one-third of the total members of Assembly, the Speaker of the Assembly may summon the Assembly and when he has summoned it, he may prorogue it. When the Assembly of a province is summoned the date, time and place of meeting shall be specified.

The Governor may dissolve the Assembly of the Province where a conflict on a matter has arisen between him and the Assembly, the conflict has been referred to the National Assembly in accordance with this Article for his decision, the National Assembly has decided the conflict in favour of the Governor, and President has concurred in the dissolution of the Provincial Assembly by the Governor. If at any time a conflict with respect to any matter arises between the Governor of a Province and the Assembly, either the Governor or Speaker of the Assembly or both may request the President in writing, to refer the conflict to the National Assembly for decision. A copy of the request shall, at the time it is made, be sent to the Speaker where the request is made by the Governor and to the Governor where it is made by the Speaker. The President shall, upon receipt of the request, forthwith send copy of the request to the Speaker of the National Assembly. The conflict shall be considered by the National Assembly and a resolution deciding the conflict shall be passed not later than 30 days after copy of the request is received by the Speaker of the National Assembly and if it is necessary to summon the Assembly in order to enable the conflict to be so considered and decided, the President, or if he fails to do so, the Speaker, shall summon the National Assembly. The Governor of a Province shall not dissolve



the Assembly of the Province except as provided in this Article (Article 74).

The Governor of a Province may address the Assembly of the Province and also send messages to it. A member of the Governor's Council of Ministers for a Province and the Advocate-General for the Province shall have the right to speak in and otherwise take part in the proceedings of the Assembly of the Province or any of its committees but shall not be entitled to vote. No Bill or amendment of a Bill providing for or relating to Preventive Detention shall be introduced or moved in the Assembly of the Province without the previous consent of the Governor of the Province.

When a Bill has been passed by the Assembly of a Province, it shall be presented to the Governor of the Province for assent. The Governor shall, within 30 days after a Bill is presented to him, assent to the Bill, declare that he withholds assent from the Bill, or return the Bill to the Assembly with a message that the Bill or a particular provision of the Bill be reconsidered and any amendment specified in the message be considered. If the Governor fails to do any of those things within the period of 30 days, he shall be deemed to have assented to the Bill at the expiration of that period. If the Governor declares that he withholds assent from a Bill, the Assembly shall be competent to reconsider the Bill, and if the Bill is again passed by the Assembly (with or without amendment) by the votes of not less than two-thirds of the total number of members of the Assembly, the Bill shall again be presented to the Governor for assent. If the Governor returns a Bill to the Assembly, the Assembly shall reconsider the Bill, and if the Bill is again passed by the Assembly without amendment or with the amendments specified by the Governor in his message, or with amendments which the Governor has subsequently informed the Speaker of the Assembly are acceptable to him, by the votes of a majority of the total number of members of the Assembly, the Bill shall be presented to the Governor again for his assent. The Bill shall also be presented to the Governor again if it is passed by the Assembly, with amendments of a kind not mentioned before, by the votes of not less than two-thirds of the total number of members of the Assembly. When a Bill is presented to the Governor again for his assent, the Governor shall, within ten days after the Bill is presented to him, assent to the Bill or request the President to refer the Bill to the National Assembly as a matter with respect to which a conflict has arisen between the Governor and the Assembly of the Province. However, if within the period of 10 days the Governor fails to do either of those things, he shall be deemed to have assented to the Bill at the expiration of that period. If, after a bill has been referred to the National Assembly, the latter passes a resolution supporting the Bill, the Governor shall be deemed to have assented to the Bill on the day on which the resolution is passed.

When the Governor of a Province has assented to or is deemed to have assented to a Bill passed by the Assembly of a Pro-



vince, it shall become law and shall be called an Act of the Legislature of the Province.

Article 79 provides for the legislative powers of the Governor when the Provincial Assembly is not in session. It is provided that if at a time when the Assembly of a Province stands dissolved or is not in session, the Governor of the Province is satisfied that circumstances exist which render immediate legislation necessary, he may make and promulgate such ordinances as the circumstances appear to him to require and any such ordinance shall have the same force of law as an Act of Provincial Legislature. An ordinance made and promulgated under this Article shall, as soon as it is practicable, be laid before an Assembly of the Province. If before the expiration of the prescribed period the Assembly of the Province, by a resolution, approves of the ordinance, the ordinance shall be deemed to have become an Act of Provincial Legislature. However, if before the expiration of that period the Assembly of the Province, by a resolution, disapproves of the ordinance, it shall cease to have effect and shall be deemed to have been repealed on the passing of the resolution. If the Assembly of the Province has not approved or has not disapproved of the ordinance and it has not been repealed by the Governor before the expiration of the prescribed period, it shall cease to have effect and shall be deemed to have been repealed upon the expiration of that period. The power of the Governor of a Province to make laws by the making and promulgation of ordinances extends only to the making of laws within the legislative powers of the legislature of the Province. The prescribed period in relation to an ordinance means the period ending 42 days after the first meeting of the Assembly of the Province following the promulgation of the ordinance or the period of 180 days after the promulgation of the ordinance, whichever is shorter.

Article 86 provides that all revenues received and all loans raised by a Provincial Government and all moneys received by a Provincial Government in repayment of a loan, shall form part of one consolidated fund to be known as the Provincial Consolidated Fund of the Province concerned. The custody of the fund, the payment of moneys into and the withdrawal of money from that fund and all other transactions relating to that fund, shall be regulated by or under an Act of the Provincial Legislature or by rules made by the Governor of the Province.

The following expenditure is charged upon the Provincial Consolidated Fund of a Province:—

- (1) Remuneration payable to the Governor of the Province and other expenditure relating to his office.
- (2) Remuneration payable to the Speaker, the Deputy Speakers and other members of the Provincial Assembly, Judges of the High Court of the Province, members of the Governor's Council of Ministers, Parliamentary Secretaries appointed by the Governor and the members of the Public Service Commission of the Province.



- (3) The administrative expenses of the Provincial Assembly High Court of the Province and Public Service Commission of the Province.
- (4) Debt charges for which the Provincial Government is liable, including interest, sinking fund charges, the redemption or amortisation of capital and other expenditure in connection with the raising of the loan and the service and redemption of debt on the security of the Provincial Consolidated Fund.
- (5) Sums required to satisfy any judgment, decree or award against the Province by any Court or Tribunal.
- (6) Other sums declared by an Act of the Provincial Legislature to be so charged.

Article 89 provides that the provisions of Articles 40 to 47 of the Constitution shall apply to and in relation to a Province. The only difference is that for the term 'President' the term 'Governor' shall be read, and for the term 'National Assembly', the term 'Provincial Assembly' shall be read. Article 40 deals with Annual Budget Statement of the Central Government. Article 41 relates to the procedure of the National Assembly in relation to Annual Budget Statement. Article 42 deals with estimates for projects extending over several years. Article 43 gives a Schedule of the Authorised Expenditure. Article 44 deals with Supplementary and Excess Budget Statements. Article 45 provides for unexpected expenditure. Article 46 deals with expenditure from Central Consolidated Fund pending authentication of Schedule of Authorised Expenditure.

Article 90 provides that no taxes shall be levied for purposes of a Provincial Government except by or under the authority of an Act of the Provincial Legislature.

### Services of Pakistan

Part VIII of the Constitution of Pakistan consisting of Articles 174 to 190 deals with the services of Pakistan. Article 174 provides that the appointment of persons to and the terms and conditions of service of persons in the services of Pakistan may be regulated by law.

Article 175 provides that a person who is not a citizen of Pakistan shall not be eligible to hold any office in the service of Pakistan. However, a person who, immediately before the commencing day, was in the service of Pakistan, shall not be disqualified from continuing in the service of Pakistan by reason only that he is not a citizen of Pakistan.

Article 176 provides that a person who is a member of an All-Pakistan Service, or of any Defence Services of Pakistan or of a civil service of the Centre, or who holds a post connected with defence or a civil post in connection with the affairs of the Centre, shall hold office during the pleasure of the President. A person



who is a member of a civil service of a province or who, except as a member of an All-Pakistan Service, holds a civil post in connection with the affairs of a province, shall hold office during the pleasure of the Governor of the Province.

Article 177 provides that a person who is a member of an All-Pakistan Service or of a civil service of the Centre or of a Province, or who holds a civil post in connection with the affairs of the Centre or of a Province, shall not be dismissed or removed from service, or reduced in rank by an authority subordinate to that by which he was appointed unless that subordinate authority has been expressly empowered to do so by an authority not to subordinate. Moreover, he shall not be dismissed or removed from service or reduced in rank unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken with respect to him. This Article shall not apply where a person is dismissed or removed from service or reduced in rank on the ground of conduct which has led to his conviction, entailing imprisonment, on a criminal charge, or where an authority empowered to dismiss or remove a person from service or to reduce a person in rank considers that in the circumstances of the case, it is not practicable to give to the person an opportunity of showing cause or that it would be prejudicial to the security of Pakistan for the person to be given an opportunity.

Article 178 provides that subject to the Constitution and law, appointments to an All-Pakistan Service or to a civil service of the Centre or to a civil post in connection with the affairs of the Centre, shall be made by the President or a person authorised by the President in that behalf. Appointments to a civil service of a Province, or to a civil post in connection with the affairs of a Province, shall be made by the Governor of a Province, or a person authorised by the Governor in that behalf. The terms and conditions of service of persons serving in a civil capacity in the service of Pakistan shall be as prescribed by rules made by the President or by a person authorised by the President in that behalf in the case of a person who is a member of an All-Pakistan Service or who is serving in connection with the affairs of the Centre. In the case of a person who is serving in connection with the affairs of a Province, those rules shall be made by the Governor of a Province or by a person authorised by the Governor in that behalf. Those rules shall be so framed as to ensure that the terms and conditions of service of a person relating to remuneration or age fixed for superannuation are not varied to his disadvantage. Where an order is made which punishes or formally censures a person, alters or interprets to the disadvantage of a person any rule effecting his terms or conditions of service or terminates the employment of a person otherwise than upon his reaching the age of superannuation, he shall, except where the order is made by the President or a Governor, have at least one appeal against the order. Where the order is made by the President or a Governor, he shall have the right to apply to the President or the Governor for a review of the order.



Article 179 provides that the President, in relation to the affairs of the Centre and the Governor of a Province in relation to the affairs of Province, may authorise the temporary employment of persons in the service of Pakistan and may make rules for regulating such temporary employment. Articles 175 to 178 shall not apply to or in relation to temporary employment of persons in the service of Pakistan.

### **Public Service Commissions**

Article 180 provides that there shall be a Central Public Service Commission for the Centre and a Provincial Public Service Commission for each Province. Article 180 provides that in the case of the Central Public Service Commission the President, and in the case of a Provincial Public Service Commission the Governor of the Province concerned, may by order determine the number of members of the Commission and the number of members of the staff of the Commission and their terms and conditions of service. Article 180 provides that the members of the Central Public Service Commission shall be appointed by the President and the members of the Provincial Public Service Commission shall be appointed by the Governor of the Province concerned. The terms and conditions of service of a member of the Central Public Service Commission shall be determined by Act of the Central Legislature, or, until so determined, by the President. The terms and conditions of service of a member of a Provincial Public Service Commission shall be determined by an Act of the Provincial Legislature concerned or until so determined, by the Governor of the Province. Not less than one-half of the members of a Commission shall be persons who are, at the time of appointment, or who have been at some time before appointment, in the service of Pakistan. Where a person appointed as a member of a Commission was, immediately before his appointment, in the service of Pakistan, his rights as a person in the service of Pakistan, shall not, subject to his appointment and service as such a member, be affected.

Article 184 provides that a member of a Commission shall hold office for a term of three years from the date upon which he enters upon his office. A member of a Commission shall not be removed from office except in the manner prescribed for the removal from office of a Judge of a High Court or Supreme Court. A member of a Commission may resign his office by writing under his hand addressed to the President in the case of Central Public Service Commission and to the Governor of the Province concerned in the case of a Provincial Public Service Commission.

Article 185 provides that the functions of the Central Public Service Commission shall be to conduct tests and examinations for the selection of suitable persons for appointment to the All-Pakistan Service, the civil services of the Centre, and civil posts connected with the affairs of the Centre, to advise the President on any matter on which the Commission is consulted or which is re-



ferred to the Commission by the President, and such other functions as may be prescribed by law. Except to the extent that the President, after consulting the Commission, may provide otherwise by order, the President shall, in relation to the All-Pakistan Services, the civil service of the Centre, and civil posts connected with the affairs of the Centre, consult the Central Public Service Commission with respect to matters relating to qualifications for, and methods of recruitment to, services and posts, the principles on which appointments and promotions could be made, the principles on which persons belonging to one service should be transferred to another, matters affecting the terms and conditions of service and proposals adversely affecting pension rights and disciplinary matters.

Article 186 provides that the functions of a Provincial Public Service Commission shall be similar to those of the Central Public Service Commission. The only difference is that the Provincial Public Service Commission deals with the services of the Province, and the Governor is substituted in place of the President. Article 187 provides that the Governor of a Province may, with the approval of the President, refer to the Central Public Service Commission a matter relating to the services of the province or posts connected with the affairs of the Province.

Article 188 provides that where the President or a Governor does not accept the advice of a Commission, he shall inform the Commission accordingly. Article 189 provides that each Commission shall, not later than 15th day of January in each year, prepare a report on its activities during the year ending on the previous 31st day of December and submit the report to the President in case of the Central Public Service Commission and to the Governor of the Province in the case of the Public Service Commission of a Province. The report shall be accompanied by a memorandum setting out so far as is known to the Commission, the cases, if any, in which its advice was not accepted, and the reasons why the advice was not accepted, and the cases where the Commission ought to have been consulted but was not consulted, and the reasons why it was not consulted. The President or the Governor, as the case may be, shall cause the report and memorandum to be laid before the National Assembly or the Provincial Assembly, as the case requires, at the first meeting of the Assembly held after the 31st day of January in the year in which the report was submitted.

### Political Parties

President Ayub Khan was opposed to political parties. He is believed to have observed thus: "Political parties have been our bane in the past." However, he allowed in 1962 the political parties to reappear. Two explanations have been given for this change. One view is that in doing so, he responded to public pressure. The other view is that he became conscious of the fact that for maintaining his hold under the new Constitution, it was



absolutely necessary for him to have a political party of his own to strengthen his hands.

In 1964, the major party in Pakistan was the Muslim League which called itself Conventionist in order to distinguish itself from the other splinter groups of the Muslim League. Its aim is to support President Ayub Khan who himself joined the party in May, 1963 and later on became its President. The party seeks to enroll members from all walks of life and it is stated that it has succeeded in enrolling more than 20 lacs members. This party controls all the legislative assemblies, although not by large majorities. The Opposition parties have no definite programme except the National Awami Party of Maulana Bashani. The latter stands for neutralism in foreign affairs. In the National Assembly, there is the Pakistan People's Group under the leadership of Yusuf Khattak. It seeks a return to the Constitution of 1956. The Communist Party and the Jamait-i-Islami are banned of

### Elections of 1962

Pakistan had her first general elections under the new Constitution in April and May 1962. The voters were Basic Democrats who were grouped into 300 constituencies for the central elections. It was not necessary that the candidates also must be Basic Democrats. However, they were required to be approved of by an Election Commissioner. As the number of voters was small, it was not difficult for the candidates to influence them in very many ways. The results of the elections showed that many Mullahs, Pirs and powerful landlords were returned to the National Assembly. Many new faces also appeared in the Provincial Assemblies, including village farmers, shop-keepers, urban labourers and tradesmen. Critics point out that the new experiment produced "*Government for the people by the bureaucratic elite*" and it is not in any way different from what it was before

### Criticism of the Constitution

The new Constitution of Pakistan has been criticised on many grounds. It is pointed out that Pakistan has neither a parliamentary form of government nor a presidential form of government. The President of Pakistan is not a constitutional head as he would have been if Pakistan had a parliamentary form of government. His ministers are not responsible to the National Assembly and they cannot be voted out of power by an adverse vote in the Central Legislature. The American pattern has also not been strictly followed as the Ministers in Pakistan are required

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1. Field Marshall Ayub Khan has criticised parliamentary form of government in these words: "An average villager with little or no education has no means of gaining any personal knowledge about a candidate who is mixed up in a population of 100,000 or more, spread over a large area without any advanced means of communication or contact. Votes cast under these circumstances cannot but be vague, wanton and responsive to fear, coercion, temptation and other modes of misguidance. Conditions such as these reduce the practice of democracy to a farce".



to be something more than what the various secretaries in the United States are.

Pakistan has started a novel experiment of unicameral legislatures both at the Centre and in the Provinces. It is still to be seen as to how a unicameral system can work successfully in a country where a federal form of government is intended to be worked. It is also to be seen how in the absence of a second chamber, the interests of the units of the federation can be adequately safeguarded. The framers of the Constitution have ignored altogether the various advantages which a country gets by having a bicameral system. No big country in the world has a unicameral legislature like the National Assembly of Pakistan and the experiment of Pakistan will be watched with great interest by the students of politics all over the world.

It is true that Pakistan has been given a federal form of government, but actually some sort of a unitary government has been set up in the country. The Centre has been made all powerful. The Constitution does not specify the field in which the provinces are going to be completely autonomous. The Third Schedule to the Constitution contains only those matters in respect to which the Central Legislature has exclusive powers to make laws. It appears that more emphasis has been put on the unity and interests of Pakistan as a whole than on the autonomy of the Provinces. The Central Government has been given the right to interfere even in those matters which are purely provincial, and the National Assembly is given the power and authority to arbitrate in matters in which there is a dispute between the Assembly of the Province and the Governor of the Province.

It is true that Part II of the Constitution provides for what are known as Principles of Law-making, but those are no good substitute for the fundamental rights which the citizens of Pakistan should have a right to possess. The rights granted in 1963 are limited in scope.

The experiment of limited democracy introduced by the new Constitution may not be to the liking of the people. All power has been put in the hands of an Electoral College of Pakistan, which cannot be a substitute for the 94 million people of Pakistan.

It is pointed out that "the new Constitution seeks to consolidate the power of the generals and bureaucrats and to perpetuate authoritarian Government."

The Islamic character of the Republic will give a handle to the ultra-religious and fanatical sections of the people of Pakistan to create confusion in the country and distract the people from their social and economic problems. As Pakistan is an Islamic Republic, it is logically against some of the provisions of the Constitution which guarantee equality of rights and other opportunities to all without regard to race, religion, caste, or place of birth. The result would be that the non-Muslim citizens of Pakistan would be reduced to the status of second-class citizens.



The system of indirect elections is based on a distrust of democracy. The personal view of President Ayub Khan is that if legislators are elected "by broad masses of people, driven into the polling booths and beaten or coerced or tempted into casting their votes in God knows what manner, then what obligations the man elected is going to have to the voters and what can the voters expect from a man they so elect?" Again, "Has our society by and large developed to the stage when they can determine individually as to who should be their President? Can they be expected to say 'so and so is better than so and so'? Is it their fault if they do not know it? Have they been educated enough yet? Have they been—say, 80 per cent to 85 per cent of them—dealing with problems outside their immediate normal sphere? Can you blame them if they can't distinguish between you and I? You cannot blame them. And so, if they cannot make a decision themselves then what happens? Then somebody has got to go and make a decision for them or induce them to make a decision if the people had education and necessary sophistication to be able—to create public opinion, to be able to defend the Constitution, then a lot of these lapses would not have occurred. When in 15 to 20 years time—education becomes universal in Pakistan, I hope there will be much larger middle class in the country and what appears to be difficult today would be possible then."

However, it is pointed out that there is no guarantee that the members of the Electoral College will always make sober and independent decisions. As a matter of fact, it may be easier to influence and even buy the votes of the members of the Electoral College whose number is very much limited. The system introduced in Pakistan is against the view that the evils of democracy can be removed by having more democracy and not less as it is easier to buy a few hundred or a few thousand voters than to buy millions of voters if every individual is given the right to vote. It is also pointed out that the members of the Electoral College may not represent the current public opinion as they might have been elected very much earlier. In that case, the National Assembly or the Provincial Legislatures would not be the true mirrors of the public opinion outside.

According to Richard V. Weekes, "The role of the Basic Democracies is left vague. The Constitution provides no formal link between the Union Councils and higher groups with the centres of power in Government. The amount of responsibility they have depends upon the President and his administration. Their influence on the course of government is informal except when the Basic Democrats are asked to vote for members of the assemblies, for a President or in a referendum." (*Pakistan*, p. 122.)

It is also pointed out that a study of the Constitution of Pakistan shows that the balance of authority is tilted in favour of the State and against the individual. Too many restrictions have been put on the individual. Even if we take one example.



as many as eight restrictions have been put on the individual. The freedom of expression can be interfered within the interest of the security of Pakistan, for the purpose of ensuring friendly relations with foreign States, for the purpose of ensuring the proper administration of justice, in the interest of public order, for the purpose of preventing the commission of offences, in the interest of decency or morality, for the purpose of granting privileges, in proper cases, to particular proceedings and for the purpose of protecting persons in relation to reputation. The same is the case with regard to the other freedoms provided in the Constitution of Pakistan.

Critics also find fault with the procedure of impeachment and removal of the President. The Constitution provides that if less than one-half of the total number of members of the National Assembly vote in support of the motion of impeachment or removal of the President, the members who had given notice of the resolution to the Speaker of the National Assembly shall cease to be members of the National Assembly forthwith after the result of the voting on the resolution is declared. It is true that the object of this provision is "to ensure that promiscuous and irresponsible attacks are not made on the President", "that he is not illegitimately harassed" and "so that they act responsibly and respectfully". However, the actual result of this provision can be that the members of the National Assembly will not have the courage to move such a resolution. As a result, the power of the National Assembly to put a check on the President and his Ministers will be very much lessened.

It is also pointed out that the provision in the Pakistan Constitution that the President must include in his Cabinet a Defence Minister who has held a prescribed rank in the Defence Services of Pakistan, not less than that of a Lieutenant-General or an equal rank, to advise him in relation to the defence of Pakistan, is not desirable. This will make the military very strong in the Cabinet and otherwise may not be conducive to the growth of democratic institutions in Pakistan.

According to Mr. Z. H. Lari, democracy would start functioning in Pakistan only when political parties are revived, fundamental rights are made justiciable and direct elections to Parliament are devised. Political education will not be adequately possible unless human rights are assured. Free thinking and free association grow only in an atmosphere which is not surcharged with apprehension. The continued detention of the people without trial or scrutiny by a High Court is a negation of law and democracy. Recent elections have conclusively shown that the basic democrats cannot be entrusted with the task of electing representatives to Parliament. The fear that corruption would vitiate the elections in many a case, has been more than justified.

### SUGGESTED READINGS

Brohi, A. K.

: Fundamental Law of Pakistan (1958).

- Callard, Keith* : Pakistan: A Political Study (1957).  
*Callard, Keith* : Political Forces in Pakistan (1959).  
*Chowdhury, G. W.* : Constitutional Development in Pakistan (1959).  
*Government of Pakistan* : Dawn of a New Era: Basic Democracies.  
*Gledhill* : Pakistan (1957).  
*Inayatullah, (Ed.)* : Bureaucracy and Development in Pakistan (1963).  
*Jennings, Sir Ivor* : Constitutional Problems of Pakistan (1957).  
*Jennings, Sir Ivor* : The Commonwealth in Asia.  
*Jennings, Sir Ivor* : Approach to Self-Government (1956).  
*Lumby, E. W. H.* : Transfer of Power in India (1955).  
*Mushtaq Ahmed* : Government and Politics in Pakistan (1959).  
*Newman, K. G.* : Essays from Pakistan (1954).  
*Rizvi, S. M. Z.* : A Reader in Basic Democracies (1961).  
*Samin Khan* : An Introduction to Basic Democracy (1960).  
*Shafakat* : Constitution of Pakistan.  
*Smith, W. C.* : Pakistan as an Islamic State.  
*Weekes, Richard* : Pakistan (1964).  
*Constitution of the Islamic Republic of Pakistan* (1956).  
*Constitution of the Republic of Pakistan* (1962).